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**BIS** | Department for Business  
Innovation & Skills

**Department for Business, Innovation  
and Skills:**

**Evaluation of the Companies Act  
2006, Volume Two (appendices)**

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## 1 Detailed methodology

This section provides further information to supplement Section 3 in the main body of the report contained in Volume One.

### 1.1 Sample frame and number matching

The sample methodology adopted for this study was a stratified random probability sampling design. The primary sampling units were businesses, with strata defined by types of business (five categories: small private; medium private; large private; public; and quoted).

The sample design tended towards a disproportional allocation rather than proportional allocation, as having sample sizes proportional to the corresponding population sizes would have resulted in samples which are too small for the smaller population groups, such as public and quoted companies. Therefore, the sample allocation to the strata was disproportional to compensate for anticipated differential response rates in business type and to achieve minimum sample sizes for groups of businesses which formed domains of interest. Within each stratum, businesses were sampled with equal probability and without replacement.

A sample frame was drawn up as shown in Table 1. The sample frame was all the companies of the appropriate type on FAME, and the sample was constructed to achieve 1,000 companies sampled.

**Table 1 Sample frame**

Business Types	Population	Population proportion	1000 interviews split proportionally	Target Interviews	Confidence Interval (+/-%)
Private: Small	2,044,224	97%	972	228	6.5
Private: Medium	32,322	2%	15	250	6.2
Private: Large	18,705	1%	9	250	6.2
Public	7,308	0%	3	222	6.5
Quoted	781	0%	0	50	13.4
<b>Total</b>	<b>2,103,340</b>	<b>100%</b>	<b>1000</b>	<b>1000</b>	<b>3.1</b>

The survey was conducted using a stratified random probability sampling approach with details outlined below.

Sample was drawn from a commercial data source used by BIS, the Bureau Van Dijk FAME database. A high proportion of businesses on the database had a missing telephone

number; as a result, a number matching exercise was carried out on the sample drawn to append telephone numbers to business records. Additionally, for each company where a telephone number was missing and a website or email address was present, every effort was made to obtain a telephone number for that company. Table 2 below shows a breakdown of business type by the proportion with and without numbers on the database. As can be seen from the breakdown in Table 2, a large proportion of businesses held on the database had no telephone number given.

For the purposes of the survey, the unclassified, micro and small categories were merged into one category: private, small. The sample frame was constructed to take into account the sample required from BIS in order to achieve 1,000 records at the end of the survey period; this took into account the loss of sample owing to:

1. The expected response rates.
2. Number matching process - As some telephone numbers would not be available for some of the sampled contacts.
3. Database errors; such as duplicated records, wrong numbers, fax numbers, etc.

As a result, ORC International obtained 21,024 records of registered businesses; of which 63% had no telephone number attached. The sample received was subdivided by business type and age. This was to ensure the survey covered views of business which have been in operation over different time periods.

Following receipt of the sample from BIS, business records were first sorted by telephone numbers (Table 2). Any sample contact with no telephone number attached was put forward for a number matching exercise. Both a manual and an online number matching exercise were undertaken. The business type with the lowest match rate was private: small, this group also had the highest proportion of missing numbers. The manual telephone matching was undertaken by PD Bureau, whilst the online matching was undertaken by InfoUK, both are specialist agencies which are approved suppliers of Infogroup/ORC International.

**Table 2 Breakdown of records on the FAME database**

<b>Business type</b>	<b>With phone numbers</b>	<b>Without phone numbers</b>
Unclassified	3%	97%
Private: Micro	21%	79%
Private: Small	31%	69%
Private: Medium	48%	52%
Private: Large	49%	51%
Public	63%	37%

Quoted	64%	36%
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After the number matching exercise 11,191 businesses were found to be valid for the survey (see Table 3). This then became the sample for the survey.

**Table 3 Sample after number matching**

<b>Business type</b>	<b>Frequency</b>	<b>Percent</b>
Private: Small	2,097	18.7
Private: Medium	2,597	23.2
Private: Large	3,377	30.2
Public	2,618	23.4
Quoted	502	4.5
<b>Total</b>	<b>11,191</b>	<b>100.0</b>

## 1.2 Achieved interviews, final resolution and sampling errors

Samples were released in batches and strike rates monitored closely during fieldwork to see how targets were being filled against projection and to have a better understanding of the responses rates predicted.

At the end of the survey period, a final sample of 1,001 respondents was achieved (see Table 4), which yields a sampling error of approximately +/- 2.11% at a 95% confidence level overall. This sampling error is calculated based on 85% of respondents who were aware of the recent changes in the Companies Act. Table 4 shows the achieved sample by business type.

**Table 4 Achieved interviews**

<b>Business type</b>	<b>Frequency</b>	<b>Percent</b>
Private: Small	258	25.8
Private: Medium	232	23.2
Private: Large	235	23.5
Public	227	22.7
Quoted	49	4.9
<b>Total</b>	<b>1,001</b>	<b>100.0</b>

### Overview of sample errors

With any sample survey, results are subject to various sources of error, one of these is sampling error. Sampling error is the variability that occurs by chance because a sample of businesses and not the whole business population has been surveyed. In general, the smaller the sample size the larger the potential error. We can make some assessment of the size of sampling error by calculating the standard error of survey estimates. To calculate standard errors for the survey estimates, we use a combination of methods capable of taking into account the sample design, as well as the unequal weights assigned to business types.

### **Design effects**

The complexity of the sample design means that the sampling errors calculated on the basis of a simple random sample design will not reflect the true variance in the survey estimates. The ratio of the standard error of the complex sample to that of a simple random sample of the same size is known as the design effect. Besides the design effect there is also a design factor, which is the factor by which the standard error of the estimates changes due to the sample design. The design factor (deft) is more useful for adjusting standard errors. But the design effect tells you how much information you have gained or lost by using a complex survey rather than a simple random sample.

### **Confidence Intervals**

Surveys are most often based on a sample (rather than a census) of a certain population, which introduces a measure of random uncertainty, or variability, associated with survey estimates. Since the purpose of survey sampling is to measure unknown population quantities, we assess the survey sample in terms of the likelihood that our sample estimate (a known quantity) comes close to the true value (an unknown quantity). How close is close is measured in terms of precision; a common measure of precision is the margin of error, which is expressed as an interval around the estimate. This interval gives a range in which the true value of the population is likely to fall. The standard error is used to construct the confidence interval of the survey estimate, and a 95% confidence interval is calculated as 1.96 times the standard error on either side of the estimated value, since under a normal distribution, 95% of values lie within 1.96 standard errors of the mean value. When we refer to 95% confidence, we accept that there is a 5% chance that the sample we draw will result in an estimate for the true population value that falls outside the 95% confidence interval we have constructed.

Examples of key questions showing standard error and confidence intervals can be seen at the end of this sub section.

### **Final resolutions**

Within the fieldwork procedure there was a priority set on repeating contact, this is in line with effective management of any interviewing fieldwork; this was as follows:

1. Appointment – subjects who have agreed to take part in an interview – appears through the system as per the date and time of appointment.
2. Call back – Someone other than the potential respondent has answered, suggesting that they are re-called later.
3. No reply / engaged / answer phone.
4. Fresh sample – initialized once other repeated contact has been made.

With any survey there is an element of non-response / non eligibility, that is, the contact specified on the sample cannot be reached for one reason or another (such as the telephone number being inaccurate, the number available is residential rather than business, or the interviewer may go through to an answer-phone). This will be discussed in more detail in the following sub-section. Given the number of different outcomes that are likely to occur, when identifying the amount of sample needed for each piece of research, all these factors are taken into consideration. Some of these issues can be addressed by calling back the contact or by setting appointments to contact the individual at a more convenient time. As a result there was a call-back procedure in place to maximise the total number of completes.



The maximum call value was set at six; this gave each piece of sample six chances of reaching a final resolution. If however, on the 6<sup>th</sup> attempt an appointment was made within the survey period, this appointment was honoured. Therefore, pieces of sample were only called seven times if for the purpose of an appointment. If on calling for a previously made appointment on the seventh call and the respondent was unavailable, the piece of sample was moved into final resolution.

Each piece of sample contacted was attributed with a final resolution from the list that follows:

1. Interview achieved and completed.
2. Respondent refused to take part in the survey.
3. Interview terminated by potential respondent.
4. An appointment set outside the survey period – this fell into two categories if i) if a contact was unavailable during the survey period and wished to make an appointment outside the survey period in case the survey is extended or, ii) appointment was not honoured after the maximum call attempt.
5. Maximum number of calls achieved with no resolution (a ‘no resolution’ means no appointment, no interview, no contact at all). The maximum number of calls was set to six for this project.
6. Unobtainable, if the number did not work, was a residential number, or business no longer at the address (the interviewer was prompted to ask for an alternative number to reach the business and call that number to gain contact at that time).

At the end of the survey period the following distribution was achieved

**Table 5 Final resolution**

<b>Disposition</b>	<b>Freq</b>
Refusal	841
Terminated	70
Unobtainable	952
Completed	1,001
Other Outcome	513
Duplicate Number	137
Res/Business Number	73
Fax	28
Refusal by Respondent	956
Refusal - Company Policy	1,413
Max Calls	5,072
Liquidation	135
<b>Total Sample used</b>	<b>11,191</b>

The overall response rate achieved was 23%. The response rate was calculated as the percentage of the 'valid' sample. Sample classified as unobtainable, other outcome, duplicate number, residential/business number, fax, maximum calls, liquidation were excluded from the calculation. The response rate broken down by business type is shown in Table 6.

**Table 6 Response rates achieved**

<b>Business type</b>	<b>Sample Achieve</b>	<b>Response rate</b>
Private: Small	258	31%
Private: Medium	232	24%
Private: Large	235	18%
Public	227	23%
Quoted	49	21%
<b>Total</b>	<b>1001</b>	<b>23%</b>

### **Non-sampling error**

The following section addresses the sources of each non-sampling error and the steps taken to minimise the bias produced by each.

### **Non-response error**

All surveys are affected by some degree of non-response error. Non-response error occurs due to failure to obtain information on units selected and designated for the sample, due to refusal, failure to locate etc. The extent of non-response can be measured by comparing the selected sample with the achieved sample. Frame variables (where available) may also provide information on the characteristics of the non-responding units. See table 7 for the distribution of the achieved and non-responding sample.

**Table 7 Response and non-response distribution by business Type**

<b>Business type</b>	<b>Achieved Sample Distribution (%)</b>	<b>Non-response Distribution (%)</b>	<b>Difference in both distributions</b>
Private: Small	26%	18%	8%
Private: Medium	23%	23%	0%
Private: Large	23%	31%	-7%
Public	23%	23%	0%
Quoted	5%	4%	0%

There are two types of non-response: unit non-response and item non-response. Unit non-response arises when no survey data are collected for a sampling unit (information is missing on all the questionnaire variables); and item non-response arises when some data are collected but values of some items (questionnaire variables) are missing.

Unit non-response reduces the sample size and can lead to less precise estimates; it can also introduce bias, where some groups in the population are over or under represented leading to deviations from a representative sample.

Non-response bias tends to increase with the rate of non-response. It is difficult to estimate the impact of non-response on the survey estimates without conducting a survey of non-respondents. We strived to maximise response rates, thereby minimising unit non-response bias, using follow-up techniques whereby interviewers attempted to make appointments at a time convenient to the respondent if the time of calling was not convenient. In preparation for companies asking for extra information on the survey before agreeing to take part, we also designed a web page listing further information on the survey that was linked to the BIS website, enabling companies, to read up further on the research. An email account was also set up and administrated allowing ORC International to send out further information and capture details of those respondents who registered an interest in taking part having reviewed further details of the research.

Item non-response in surveys is expected as incomplete information on some variables is expected.

Sample persons in a telephone survey may refuse to participate directly, or may be using answering machines and caller ID to screen calls, and thus in some sense refuse to participate without being formally solicited.

### **Coverage error**

This error is associated with the sampling frame when units are missing (under-coverage) or represented more than once (over-coverage). As the source of the error is the sampling frame it is therefore important to have a high quality and complete sampling frame of the target population. The steps taken to improve the sample (telephone matching (both manual and online), and screening to avoid replication across businesses have previously been outlined.

#### *Individuals*

Availability and access are important issues to take into consideration; therefore we staggered interviewing across different parts of the day/days of the week to ensure as far as possible the target population was covered. We also offered to make appointments to call respondents back at any time convenient for them.

#### *Businesses*

Each business was given the same chance of being selected for the survey. Once the sample was selected a telephone matching exercise was done on selected business with no numbers. However, despite our best efforts in the number matching process, we acknowledge that some establishments were excluded from the sample.

### **Measurement error**

Measurement error occurs as part of data collection and may arise from four sources: the questionnaire, the data collection method, interviewer, and the respondent.

We therefore assessed any measurement error by piloting the questionnaire prior to finalising it to understand optimum words, response categories and question length; questionnaire flow and length; and survey instructions. We subsequently amended the questionnaire due to its extensive length and reduced the number of measures asked in section 2 of the questionnaire (to those who had not made changes). We also enhanced interviewer instructions where necessary in order to mitigate any error arising from the research material.

Assessment of error arising from the data collection method is difficult to quantify without conducting a parallel experiment using an alternative mode to estimate the effect of conducting surveys via telephone versus other modes e.g. face-to-face or postal. One of the common mode effects of telephone surveys is social desirability whereby respondents are reluctant to report socially undesirable traits or acts.

To address possible interviewer effects e.g. respondent reaction to characteristics of the interviewer such as race, sex, we provided adequate training to our interviewers so that, as far as possible, questions were asked in the same way; however there is always an element of interviewer bias that we cannot control. These types of effect can be reduced by avoiding pitfalls of questionnaire design, giving clear and unambiguous instructions and definitions, and training interviewers to follow these instructions.

The final type of measurement error is the effect from respondents. Respondents, because of their different experiences and knowledge, may interpret the meaning of questionnaire items differently. For this study interviewers were briefed to speak to the most appropriate person in charge of corporate governance: for small private companies this was deemed to be the owner/ manager; for medium and large private the finance director or managing director; and for public and quoted companies the company secretary. Each respondent was clearly asked for their views on the changes introduced through the Companies Act 2006 on the specific company on the sample i.e. respondents who were responsible for corporate governance for more than one company may have been contacted more than once but in relation to different companies as specified on the sample.

## Processing error

These types of error occur during the process of converting the reporting data to published estimates e.g. data entry, coding, and editing and imputing errors. Regardless of mode of collection, data entry errors are likely to occur and we have strict quality control techniques in place that minimise the potential bias due to these errors.

## Standard error estimation for the sample

Summary tables have been prepared showing key measures for each business type and the resulting standard error and confidence intervals.

<b>Q8 Overall</b>				
<b>And are you aware of any recent changes regarding Company Law (in particular the Companies Act 2006)?</b>				
	Estimate	Standard Error	95% Confidence Interval	
			Lower	Upper
1 Yes	85.4%	1.5%	82.2%	88.0%
2 No	14.6%	1.5%	12.0%	17.8%

<b>Q8. And are you aware of any recent changes regarding Company Law (in particular the Companies Act 2006)?</b>						
Company type			Estimate	Standard Error	95% Confidence Interval	
					Lower	Upper
1 Private: Small	Yes		40%	3%	36%	48%
	No		57%	3%	52%	64%
2 Private: Medium	Yes		71%	3%	65%	76%
	No		29%	3%	24%	35%
3 Private: Large	Yes		88%	2%	83%	91%
	No		12%	2%	9%	17%
4 Public	Yes		83%	2%	78%	88%
	No		17%	2%	12%	22%
5 Quoted	Yes		94%	3%	83%	98%
	No		6%	3%	2%	17%

<b>Q132. Overall, how well would you say you understand the issues concerning the Companies Act 2006 as they apply to your company?</b>				
	Estimate	Standard Error	95% Confidence Interval	
			Lower	Upper
1 Completely	13%	2%	9%	17%
2 Quite well, but not completely	61%	2%	56%	66%
3 Not very well	19%	2%	16%	23%
4 Not at all well	7%	1%	5%	9%
5 Don't know	0%	0%	0%	1%

<b>Q132. Overall, how well would you say you understand the issues concerning the Companies Act 2006 as they apply to your company?</b>					
Company type		Estimate	Standard Error	95% Confidence Interval	
				Lower	Upper
1 Private: Small	Completely	2%	1%	1%	5%
	Quite well, but not completely	39%	3%	33%	45%
	Not very well	38%	3%	32%	44%
	Not at all well	21%	3%	17%	27%
	Don't know	0%	0%	0%	3%
2 Private: Medium	Completely	5%	1%	3%	9%
	Quite well, but not completely	56%	3%	49%	62%
	Not very well	29%	3%	24%	35%
	Not at all well	10%	2%	7%	14%
3 Private: Large	Completely	10%	2%	7%	14%
	Quite well, but not completely	62%	3%	55%	68%
	Not very well	22%	3%	17%	28%
	Not at all well	6%	2%	4%	10%
	Don't know	0%	0%	0%	3%
4 Public	Completely	12%	2%	8%	17%
	Quite well, but not completely	63%	3%	57%	69%
	Not very well	18%	3%	14%	24%
	Not at all well	6%	2%	4%	10%
	Don't know	1%	1%	0%	3%
5 Quoted	Completely	22%	6%	13%	36%
	Quite well, but not completely	65%	7%	51%	77%
	Not very well	8%	4%	3%	19%
	Not at all well	4%	3%	1%	15%

### 1.3 Weighting frame based on economic impact

The weight frame applied for small private companies was based on total assets from the FAME database; for all other company sizes the weights were calculated based on turnover data. All data included within Volumes 1 and 2, except the profiles of companies, are based on weighted data. Details of the weighting frame applied are shown below:

Public Quoted	0.25690
Public Other	0.10011
Private Small	0.05535
Private Medium	0.05958
Private Large	0.52806
Total	1.00000

### 1.4 Measures assessed in the quantitative survey

Companies Act Measure		Population				
		Small Private	Medium Private	Large Private	Public	Quoted
1.	Role of directors - Provisions governing the duties owed by directors to the company.	✓	✓	✓	✓	✓
2.	Business review- Provisions requiring directors to draw up a business review and to include it in their annual directors' report.			✓	✓	✓
3.	Access to Company Information including reduction in filing times.				✓	✓
4.	Facilitating electronic communications -- Making electronic communication the default method for communication with shareholders.			✓	✓	✓
5.	Enfranchising indirect investors – Provisions that provide rights to indirect investors through proxy and information rights.				✓	✓
6.	Simpler law/accessibility including model articles and CH guidance.	✓	✓	✓	✓	
7.	Resolutions and meetings including-	✓	✓	✓		

	Provisions that remove the need for private companies to hold AGMs, changes to the law around making decisions through written resolutions, meeting notices.					
8.	Company secretaries - The removal of the requirement for private companies to have a company secretary.	✓	✓	✓		
9.	Capital maintenance including the removal of the prohibition on financial assistance for the purchase of a company's own shares.			✓		
10.	Directors' addresses- both a service address and the usual residential address must be filed, with only the service address being placed on the public register.	✓	✓	✓	✓	✓
11.	Trading disclosures- Provisions governing what details a company must include on signs, stationery, websites etc.	✓	✓	✓	✓	✓
12.	Register of shareholders/annual return- Changes so that for most companies, shareholders' addresses are not included in annual returns. Public companies only provide names and addresses of those with significant shareholdings.	✓	✓	✓	✓	✓
13.	Auditor limited liability agreements- Provisions allowing companies to enter into an agreement with an auditor, limiting the liability of that auditor in cases of professional negligence.		✓	✓	✓	✓
14.	NONE OF THE ABOVE	✓	✓	✓	✓	✓



### 1.5 Measure implementation dates

Measure	Implementation date
Role of directors	1 <sup>st</sup> October 2007 (age/ natural person/ conflict of interest1 <sup>st</sup> October 2008)
Business review	1 <sup>st</sup> October 2007
Access to Company Information	2009
Facilitating electronic communications	20 <sup>th</sup> January 2007
Enfranchising indirect investors	1 <sup>st</sup> Oct 2007
Simpler law /accessibility	20 <sup>th</sup> Jan 2007 (articles)
Resolutions and meetings	1 <sup>st</sup> October 2007
Company secretaries	6 <sup>th</sup> April 2008
Capital maintenance	1 <sup>st</sup> October 2009
Directors' addresses	1 <sup>st</sup> October 2009
Trading disclosures	20 <sup>th</sup> January 2007
Register of shareholders/ annual return	1 <sup>st</sup> October 2009
Auditor limited liability agreements	6 <sup>th</sup> April 2008

## 1.6 Stakeholder depth interviews

Interviews were conducted with, and thanks go out to:

- Institute of Directors (IOD)
- The confederation of British Industry (CBI)
- ICSA Registrars Group
- The Association of British Insurers (ABI)
- National Association of Pension Funds (NAPF)
- UK Shareholder Association
- Trades Union Congress (TUC)
- Federation of Small Businesses (FSB)
- The Law Society
- The Institute of Chartered Accountants in England and Wales (ICAEW)
- The Institute of Chartered Secretaries and Administrators (ICSA)
- Association of Chartered Certified Accountants (ACCA)
- Quoted Companies Alliance (QCA)
- The Corporate Responsibility Coalition (CORE)
- The Association for the General Counsel and Company Secretaries of the FTSE 100

## 1.7 Case studies

### 1.71 Case study specification

The following case studies were conducted.

Case study	Description
1	Company that has high levels of awareness of the changes and has implemented changes relating to the majority of measures. LARGE PRIVATE
2	Company with awareness of most of the measures but which has made no associated changes to explore the reasons for this. SMALL/ MEDIUM
3 & 4	Company that has made changes relating to directors' duties (indicating that the changes relating to the statutory statement, duty to promote the business, or procedures relating to derivative actions have had an impact). LARGE/ PUBLIC/ QUOTED
5	Company that has indicated that they have found the changes relating to the Business Review difficult. In order to identify areas for improvement. LARGE/ PUBLIC/ QUOTED
6	Company that has made changes relating to Business Review and identified benefits for them or their shareholders. LARGE/ PUBLIC/ QUOTED

7	Company that has identified high levels of cost savings resulting from the implementation of one or more of the measures (likely to be from changes made to e-comms). PUBLIC
8 & 9	Company that has made changes to resolutions and meetings. PRIVATE X2
10	Company that has made use of the capital reduction by solvency statement provision*. LARGE PRIVATE
11	Company that has put an auditor liability agreement in place. MEDIUM/ LARGE/ PUBLIC/ QUOTED
12	Company that has high levels of awareness of the changes and has implemented changes relating to the majority of measures/ Small company agreeing that Act has simplified or assists small companies to explore how this comes into effect. SMALL
13	Company that has recently been established and has made use of some of the provisions in the Act (particularly changes to model articles, to use as illustrative examples of the current process of setting up a company under the 2006 Act). SMALL
14	Company that has identified high levels of cost savings resulting from the implementation of one or more of the measures (likely to be from changes made to e-comms). QUOTED

## 1.72 Extended case studies

### Case Study 1

## Company that has high levels of awareness of the changes and has implemented changes relating to the majority of measures

### 1. Background to company/ respondent

The respondent is the Finance Director and the organisation is a large private manufacturer which has a US parent company which is the sole shareholder. It was previously an independent company with 194 shareholders. It has a turnover of £15 million and 150 employees in the UK, and was incorporated to Companies House in 1972.

### 2. General awareness / implementation of the Act

The respondent had a high level of awareness of the Act which he described as the 'consolidating Act'. He also felt that it was trying to bring the Act up-to-date to take into

account technological changes and new requirements in terms of transparency of information.

### **3. Case study focus- Awareness and adoption of / compliance with specific measures**

The respondent was aware of all measures asked to large private companies bar trading disclosures. These included changes to directors' duties, the business review; facilitating eCommunications; simpler law; resolutions and meetings; company secretaries; capital maintenance; directors' addresses; the register of shareholders and auditor limited liability agreements.

The company had also made changes under the following measures: directors' duties; the business review; directors' addresses'; register of shareholders and auditor limited liability agreements.

#### **3.1 Source of awareness**

The respondent found out about changes introduced through the Companies Act 2006 from both solicitors and auditors who highlighted it was on the horizon before the changes were actually implemented. He also attended seminars before the Act was implemented in 2004 when plans were still at White Paper stage.

#### **3.2 Detail of changes**

##### Role of directors

The respondent had not changed his behaviour as a result of the codification, indicating that he has always acted in the best interests of the company. But given the company is no longer an independent company, his responsibility has decreased as decisions tend to be made more at group level. Furthermore, the company used to have 194 shareholders, but now only have one so the relationship with shareholders has obviously changed.

The respondent found out about the change and new statutory statement codifying current law from one of his lawyers; he is on an email update distribution list and receives monthly updates.

##### The business review

The company has not found complying with the additional requirements relating to the business review too arduous (reporting additionally on risk and performance indicators). The respondent himself is responsible for preparing and submitting the business review.

Whereas previously he used to disclose the bare minimum in the business review, he now has to submit a little more information. Time-wise, this additional requirement '*now takes longer to complete, but not extra days, extra hours*'.

Despite it taking longer to complete on the first occasion, the respondent indicated that now they are in the second year it is easier to update. Furthermore their KPI's always existed, but had not been disclosed previously. Overall he agreed that once the template was put in place, it was not onerous to complete year on year.

#### Auditor Limited Liability Agreements

The company entered into an agreement in December 2008 and was approached by the auditor. The respondent did not have a debate with fellow directors; he just had one discussion with their regional manager. The agreement revolved around fees and the company agreed to enter to avoid a hypothetical cost increase as the auditors said they would put up their fees if they could not add a liability paragraph clause into the contract (due to a hike in indemnity insurance which they are facing). The respondent felt it was a standard thing which they were happy to introduce:

*'(It's) no breaking point - I was happy to introduce it, happy to disclose...the risks to them were minimal as we're not an investment bank.'*

The respondent was positive overall about the agreement and couldn't see why other companies wouldn't enter such agreements:

*'An audit is necessary but the detail to which they appear to go into is far greater-over and above the requirements...the agreement covers their backs, and will reduce the work they feel they need to do to, in turn reducing costs (on both sides).'*

#### Directors' addresses

The Finance Director also changed the directors' addresses to service addresses. He felt that this was fairly straight forward online procedure which only took minutes. No issues had arisen with credit agencies as a result of doing so, but the company is not active in money lending.

### **3.3 Changes not made**

#### eCommunications

The company only has one shareholder and, therefore, has no need to send out statutory accounts. The respondent acknowledges however that if they were still independent then this change would possibly have given rise to cost savings realised from reduced printing and postage costs, and reduced time on his part, as he used to spend a whole day putting accounts into envelopes and mailing out internationally to comply with the former mandatory duty.

#### Resolutions and meetings

The company used to hold AGMs when it was an independent company, but it is coincidental that they no longer hold them, given they only have one shareholder, rather than due to the change in the Act allowing this deregulation.

#### Capital maintenance

Decisions are now driven by the group, rather than the company, as now it is a subsidiary, and therefore this is not a decision the respondent would take; it was also noted that the company only has a small amount of share capital.

#### Simpler law

The company has not yet amended its articles. Although the respondent thinks they will be changed, but there is no current pressure to do so. He believes this is due to the cost implications given there are twenty companies within the group in the UK. In his words, *'If it ain't broken don't fix it'*.

### **4 Cost savings/ overall evaluation of measure change**

The respondent recognised the greatly reduced cost of not dispatching written accounts allowing more money for dividends, stemming from the changes to eCommunications, and also hypothetical cost savings from entering an auditor limited liability agreement. However, given they have not directly benefitted, overall he didn't think the changes had had a significant effect per se and that the cost savings were not 'huge'.

In terms of time spent on compliance with or adoption of measures, the respondent indicated that:

*'(The) cash outlay was minimal...time outlay less than a week.'*

Furthermore, compared with other areas of governance such as health and safety, he thought that issues stemming from Company Law changes were minimal:

*'Minimal company law problems...far more issues with other matters.'*

#### **4.1 Implementation timing**

The respondent appreciated why the changes were phased-in and thought this had not had a huge impact. He thought that if the company had still been independent, although not all the changes were mandatory, that it would have been difficult to achieve all changes at once. His overall view on the phased implementation was “*confusing but sympathetic*”. Confusing given that new changes kept being brought in and one was constantly having to check what had changed and when, but sympathetic in that he understood why the changes could not have all been implemented at once.

#### **4.2 Familiarisation/ Guidance**

The company uses both financial and legal advisors for corporate governance issues on an ad hoc basis and approach these third parties when they need advice. No costs were incurred with regards to guidance fees as the respondent went to free seminars to find out more about the changes incorporated in the Act.

### **5 Overall evaluation- policy objectives**

#### **5.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent is a shareholder of other companies and has had correspondence via email but did not think this had led to closer involvement.

#### **5.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent had no opinion on this objective.

### **5.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent was a 'great supporter (of objective 3)' agreeing that there had been too much red tape. In his view, anyone who is a self starter faced huge barriers and that for a one man band it was "horrendous". However, the respondent thinks the new model articles and other deregulations remove that barrier, believing you can now "just take the model and go."

## **6 Overall synopsis**

Overall the respondent felt that the Act had simplified and modernised Company Law:

*"Yes has been simplified. It's consolidated the law... made more relevant as written in the last ten years. Previously most law at least twenty years old. Uses the language of the day."*

He also felt that it had made it easier to set up and run a company identifying particular benefits for start up companies:

*"Great supporter [of objective 3] - too much red tape. Anyone who is a self starter faced huge barriers - for one man band it was horrendous. Articles etc remove that barrier - just take the model and go."*

Finally, he was positive overall, believing there had been no negative impacts:

*"No negatives...was clearly overdue...Implemented sympathetically (not much impact personally)."*

## **Case Study 2**

### **Company with high awareness but has made no changes**

#### **1. Background to company/ respondent**

The company is a privately held gift shop based in the East Midlands. It has a turnover of approximately £1 million and seven full-time employees including the respondent's wife who is co-owner and the only other shareholder. Prior to the company being incorporated as a small private company in 2000, it was a partnership for 35 years.



## **2. General awareness / implementation of the Act**

The respondent became aware of the Act through advisers and Companies House communications but has made no real changes as a result of the legislation. He thought *'in actual fact the Companies House leaflet contained the best information'* as it was a standalone piece, rather than *'being contained in some other document talking about a range of different topics'*.

He was, however, not made aware of all of the potential changes from the start, but became aware of other changes more recently.

## **3. Case study focus topic- awareness of measures and reasons for not adopting changes**

The respondent is aware of most of the changes in the Act but has not made any changes; he felt that some of the provisions were not relevant to him. He could not think of anything that would encourage him to make changes to the way he runs his business.

*'Having run the business for so many years a certain way, I am used to things.'*

### Directors' duties

Firstly, with regards directors' duties, the respondent confirmed that he has not had to learn about the business or share additional information to shareholders or preoccupy himself with investors' interest in his company as he is not planning to sell shares. He believes that his behaviour has not needed to change as a result as *'I am not a director that does not know what is going on, as I am sitting in front of my computer every day'*.

He also thought that some of the provisions within the codification *'were not relevant to me and didn't make me sit up and think 'I must remember that''*.

### Resolutions and meetings

In terms of AGMs and written resolutions the respondent had not made specific changes as the process of reviewing needs and holding meetings *'is not overly formal but it's instead an ongoing affair'*.

### Company secretary

He confirmed that he is aware that he no longer needs to have a Company Secretary, but has made no changes:

*'I haven't changed anything as in some ways it seems a bit glamorous to be a Company Secretary! If someone asks you what you do, it's better to say that than you work in a shop. In the long term we might end up dropping it...just discard it as it is not necessary.'*

### Directors' addresses

The respondent also remembered reading about changes to providing directors' addresses but noted that he had not yet made any related changes.

*'I did notice it but I have not done anything about it...we have left everything as it was.'*

When asked why he had not entertained using the work address, the respondent stated:

*'I don't feel like I am hiding our existence from any of our creditors and our accounts are fairly brief – we only have to file a summary of the accounts.'*

The respondent did however state *'should we start getting bothered by a large number of phone calls and correspondence...I would consider changing addresses but for the moment I am quite cool with it...I am not really that bothered. I am not really looking to change it'*. He added that *'should we change house we would also look to switch addresses'*.

### Trading disclosures

The respondent confirmed that he had read the provisions relating to this area, but had not made any changes in this regard.

*'If you designed a new letterhead you would not need to display the information any longer, but right now we haven't changed anything.'*

The respondent does not feel that this exercise would bring cost benefits as he sees this as *'just less ink on a piece of paper'*.

#### **4. General evaluation of Act**

Whilst he believes that there has been some simplification of procedures, the changes have made little material difference:

*'It's very good for people like us as it was always a bit of a formality –paperwork that needed to be stamped...we are not doing anything differently [as far as running the business is concerned] – the accountant used to provide some forms and we would just file them.'*

##### **4.1 Familiarisation/ Guidance**

The respondent did not think the Companies Act 2006 was too complicated to understand in terms of terminology and that *'having been in business a number of years'* he did not feel the need to consult external advisers to fully understand its provisions.

The company does use external legal and financial advisers for other matters, for example the respondent notes that they use *'a legal surveyor for things like leases'*.

#### **5. Overall evaluation- policy objectives**

##### **5.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent noted that he had not really thought of the Act in this way, *'but yeah sometimes when you read about a company there are so many layers and structures that you can't really tell what is going on'*.

##### **5.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent agreed that the 2006 Act had brought about better *'simpler'* regulation and that some of the provisions are very much geared for small companies. He believed this objective has been met fully.

**5.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

However, he did note that a start up company setting up shop now would find the process easier than he did. He concludes that *'now it's a lot simpler...if you were starting now it [setting up a new company] would be less inhibiting, less cumbersome, a lot more logical and straightforward'*.

According to the respondent *'the speed at which you could probably set something up would be slightly improved'* but with regards to costs, the respondent notes that *'when you are starting a business you still need legal and financial advice and you still need your accountants probably so there would not be major cost savings. I think though that cost savings could be found in setting up bigger companies'*.

**6. Overall synopsis**

The respondent believes the 2006 Act to be a marked improvement from its predecessors, and notes that, although some refinements would be welcome, especially if geared towards micro-companies, on the whole Company Law has been simplified *'to some degree'*.

He is unable to pinpoint any negative areas or identify any further amends needed. *'I don't think there is anything negative...obviously the general public needs protecting'* so there is always going to be a need for stringent laws.

Overall he feels that the Act has helped remove some of the bureaucratic red tape and *'all the paperwork'* which was previously quite cumbersome.

**Case Study 3**

**Company that has made changes relating to Directors' Duties**

(indicating that the changes relating to the statutory statement, duty to promote the business or procedures relating to derivative actions have had an impact)

**1. Background to company/ respondent**

The respondent is the Company Secretary for a quoted company which is a specialist house builder, operating in areas of urban housing regeneration, residential property maintenance, and strategic land trading. The company has an annual turnover of £55 million and around

250 employees. It was incorporated in 1955 and has 2,000 shareholders (six of whom are major).

## **2. General awareness / implementation of the Act**

The Company Secretary felt that the Act “*absolutely needed to be updated...and needed to be dragged into the 21<sup>st</sup> century*”. She felt that it had made lives simpler and focused minds on the good management of companies; the onus, in her view, is now on directors to manage assets.

## **3. Awareness and adoption of / compliance with specific measures**

The company has amended its articles of association (indicating that this is where the greatest cost was occurred, estimating expenditure of c. £25-30,000). However, the respondent did not find the task of amending articles difficult, nor in understanding the changes introduced as a whole - this was thanks to the plentiful publications providing reading around the topic.

Another measure adopted was that of the reduction of share capital of the Group’s subsidiary companies; the respondent had used the new solvency statement as a way of reducing share capital. The company sought guidance from lawyers on the process but found it to be a “*much simpler process....far more straightforward*”. The respondent had never used the former process due it being expensive:

*“We looked at reducing our capital but one hurdle was the expense”.*

The new procedure, however “*paved the way and we were able to utilise (the new process)*”.

## **4. Case study focus topic- directors’ duties**

### **4.1 Source of awareness of measure**

The press, and particularly the chartered secretary magazine were key sources of awareness of changes introduced through the Act; bulletins from lawyers, corporate compliance (ICSA guidance), and online news were also referenced.

The respondent noted that she attended seminars run by Companies House, and found these very useful, believing that their approach was pragmatic. She also found the helpline useful.

#### **4.2 Detail of changes**

At the time of changes to directors' duties, the respondent wrote to all seven directors to inform them of the changes. The note was also emailed to their corporate lawyers to proof, because it was new, and the respondent 'wanted to get it right'.

In terms of her views on the new statutory statement of directors' duties, the respondent thought that it means that it's now in law and directors have the obligation to fulfil their duties; furthermore that:

*“Directors’ duties have now brought to the fore the future...focused their minds on the need for looking at all considerations.”*

#### Section 172

She did not believe there to be any ambiguities or uncertainties in the measures introduced regarding Section 172 stating that it was all '*fairly clear*'. The only area which required further discussions as to its clarity was that of the duty to avoid conflicts of interest (Section 175, highlighted later).

Section 172 states that '*A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole and in doing so have regard to:*

- a) *The likely consequences of any decision in the long term*
- b) *The interests of the company's employees*
- c) *The need to foster the company's business relationships with suppliers, customers and others*
- d) *The impact of the company's operations on the community and the environment*

- e) *The desirability of the company maintain a reputation for high standards of business conduct*
  
- f) *The need to act fairly as between members of the company*

The respondent interpreted the term 'have regard to' as to *"look at and balance all various aspects...to take all into consideration in turn to promote the success of the company"*.

In terms of her understanding of each of the factors listed above, she understood these to mean (in the same order):

- A. *"Having regard to the longer term. It's all part and parcel of operating a company to benefit shareholders, but it's a growing concern for the best interests of the company"*.
- B. *"Interests with employees- for a company to continue and be successful, retain cash, job satisfaction, motivation- seen as stakeholders of company too. Their interests need to be taken into account"*.
- C. *"Directors need to take long-term future decisions of the company- have to focus relationships and show that they're compliant in all respects: with accounting standards, claims within relevant periods etc."*
- D. *'Given the house building industry, health and safety is always on the board agenda each meeting. Corporate responsibility statement in reporting accounts and this is reviewed each year...'*
- E. *'Taken on board. Reputational risk in risk management'*.
- F. *'Keep tabs on who has stake through registrars...30% of our share capital is owned by a small number of shareholders. Directors, chairman and chief executive liaise with shareholders on regular basis...'*

The respondent is not a director but stated that directors are now aware of all duties.

She furthermore thought that the new Act assisted in protecting directors from shareholder pressure to achieve short term gain at the expense of long term progress, believing that:

*'Directors duties have brought to the fore the future...focused their minds on the need for looking at all considerations...'*

Procedures have not changed radically as she felt that they were already robust in terms of corporate governance. However, the new duties do feed into the board evaluation process and they have regular reviews of conflicts of interest within monthly board meetings.

The company does have long-term corporate social responsibility goals, details of which are all included in their CSR report and within the business review (an entire page is included on their goals). The process of social and environmental reporting is as follows: the Group Operations Director compiles the information and oversees health and safety and environment matters. This report is then reviewed by the Group Chief Executive who has board level responsibility for such matters.

The respondent agrees that there has been acknowledgement by the board that the changes made to directors' duties encourage all directors to enquire into the conduct of the company's affairs (in order to ensure that they are doing their duty as directors). Examples cited included review of board reports, audit committee reports, and financial risk management; all of which have been done to make sure procedures were up to speed. All information used to inform decision making is collected via regular management meetings and board papers prepared by executive directors and reviewed at board meetings.

In terms of how directors demonstrate that consideration is given, the respondent commented that it is ensured that board papers contain relevant information, such as risk analysis for certain decisions. They furthermore collate all information with views being aired at board meetings; they have board meetings every month, and papers are sent the week before.

When asked what the key impact of changes to statutory statement was, the respondent replied:

*'(It's) part of the continual review as to what directors need to fulfil their duties...'*

The respondent replied when asked whether she was clear when she should be acting in the interests of company, shareholders and /or creditors as per the revised statement:

*'It does sound confusing but overall we know to act in the best interest of the company as a whole'*

In light of the recent financial crisis and economic downturn, the respondent did however note that the current focus is on the retention of cash: *'having a positive cash balance is key'*.

#### Section 171 and 173



The company has made provisions in its constitution for nominee directors, but this has not yet been utilised.

#### Section 174

The respondent notes that directors have not undergone any specific training related to Directors' duties provisions, but they have rather just read up on various documents. The company did not run formal seminars, but all of their non executive directors are on the boards of other companies too, and thus were aware of the changes.

When questioned further on the role of non executive directors, the respondent deemed their skills and importance to be based on bringing a different perspective, thinking it to be *'more of a questioning role, bringing a questioning attitude'*. She also thought that they have different interests as a whole, and have the ability to air views freely. In sum, that *'they bring a positive questioning atmosphere'*.

Executive directors on the other hand, according to the respondent, *'run the company day to day and bring recommendations to the board'*.

#### Section 175

The respondent highlights this as an area where they have taken necessary precautionary action. On the board are two non-executive directors who are not deemed to be independent, as they represent significant shareholders. This was therefore taken into account and disclosed openly in reporting. The company has admitted awareness that these two directors potentially have the ability 'to wear a different hat' when it comes to decision making:

*'Directors now must be aware of the need to wear a different hat and make decisions for the benefit of the entire community.'*

The respondent found Section 175 very useful as it focused on how to deal with the situation, and how to disclose the matter. Openness and transparency were found to be key, and she thought that it was the duty of the directors to disclose. Their lawyers came up with a check list as to what defines a conflict of interest and this was used as guidance. The respondent did note that *'they always err on the side of caution'*.

The respondent, furthermore, did not think nor had heard of an increase in derivative claims against directors for breach of the duties set out in the statutory statement (from shareholders).

Finally, it was found that the company had amended its articles to allow directors to authorise conflicts of interest, and this required shareholder approval. The respondent noted that authorisations were minuted and various forms were signed and filed. This was also disclosed in reporting accounts.

#### Section 176

The respondent was aware of the duty not to accept benefits from third parties, but in practice *'this has not reared its head in the workplace'*.

#### **4.3 Cost savings/ overall evaluation of measure change**

Costs savings were not mentioned with regards changes to directors' duties. To surmise changes within this measure however, the respondent thought:

*'It [the 172 duty] has sharpened up directors' attitudes and procedures rather than a cultural shift.'*

### **5 General evaluation of Act**

#### **5.1 Implementation timing**

She could understand why the Act was phased in over three years, referencing the fact that Companies House needed time to put things in place, and furthermore that *'it allowed all to make adjustments and time to have procedures in place'*.

#### **5.2 Cost benefits/ incurred**

During the telephone survey the respondent noted that changes to eCommunications had been most beneficial in terms of cost savings.

The company had however according to the respondent made major change to articles to bring them in line with the Companies Act 2006, which involved amending them twice due to the timing of their year end. As a result it is within this area where greatest costs were incurred (circa £25-30,000).

#### **5.3 Familiarisation/ Guidance**

The company uses both financial and legal advisers; they outsource financial PR, and have corporate lawyers. As noted, with regards directors' duties, the circulated note was proofed by lawyers, but on the whole the respondent notes that she did not find understanding the changes introduced as a whole difficult; this was thanks to the plentiful publications enabling reading around the topic.

## **6 Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent thought this has been achieved but stressed the long-term nature of this requirement as being a key point, and that the revised directors' duties are interlinked here, given they must be aware of their duties in this regard.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent thought this has been achieved.

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent thought this has been achieved.

## **7 Overall synopsis**

The respondent believed that the Companies Act 2006 has indeed modernised and simplified Company Law. The reasons for this were based on *'dispensing with paperwork, bureaucracy, and it has stream-lined regulation. It's a lot clearer'*.

She also thought that the recognition of shareholders' interest has been a key positive, enabling *'the balance to the right around the board table'*.

## **Case Study 4**

### **Company that has made changes relating to Directors' Duties**

#### **1. Background to company/ respondent**

The respondent is the Group Finance Manager and the company is a private limited company which is involved in food manufacturing. It has a turnover of around £230 million and 2,500 employees. It is considered that its current shareholders are anticipating its sale in the short to medium term.

*'The shareholders are holding [the Company's shares] so that they gain an increase in value, in the net assets of the business [with a view] to make a sale...they are not here for the long term.'*

Despite being unable to quantify the total number of shareholders the company has, it was noted that the major shareholder owns 37% of the Company.

## **2. General awareness / implementation of the Act**

The respondent found out about the Companies Act 2006 via roadshows and seminars. He is also a member of the Institute of Chartered Accountants and as such he had access to a lot of information, so he did not require additional guidance on the changes.

## **3. Case study focus topic- directors' duties**

### Section 172

In terms of the codification of Section 172 in particular, the respondent interpreted *'to have regard to'* as simply meaning *'acting in a proper and fit manner'*. The respondent does not feel that Directors have had to significantly change the way they go about their day to day duties following the amendments to directors' duties as set out in the 2006 Act. He feels that they have always promoted the company and supported its members.

*'We just continued as we were. We do have an audit committee and we do consider the directors' responsibilities to be paramount [in running the business] and indeed we do a paper each year to summarise what the director's responsibilities are and each of the director subscribes to that'.*

When asked if the shareholders' short term focus might make it difficult for directors to have regard to the consequences of decisions in the long-term, the respondent felt that this was not an issue:

*'having a good reputation and running a successful company are not at all at odds with making money, I think that in fact they are one and the same'.*

He also added that *'anything that is untoward would be highlighted in the [annual] review'* by the Company's auditors.

The company does not publish or make public their goals regarding social and environmental strategies but *'have internal strategies on things like paper usage, energy consumptions'*. The respondent noted that no external advice was sought when putting together plans and targets for the Company's environmental and social policies; all the work was conducted in house. On a yearly basis, directors are furthermore given a summary report highlighting any policy changes. This highlight report includes notes on company law, tax, planning, employee, health and safety and similar matters.

In terms of management information system changes, to the best of the respondent's knowledge the Company has not had to modify or update their system to incorporate changes brought about by the Companies Act 2006. He added that from his point of view not much has changed to the criteria to warrant a restructuring of the company's systems.

Overall the respondent does not believe that Section 172 had much of an impact on the running of the company, as he believes its directors always operated to promote the success of the company. However, whilst no radical changes have been made the respondent confirmed that all directors, including non-executive directors, are encouraged to enquire on the status of the company so as to ensure that compliance is achieved with regards to directors' duties provisions.

According to the respondent, changes to company law brought in by the 2006 Act will *'not make any difference in terms of costs'*. Furthermore that the Company has not had to keep extra meeting notes as *'everything was always minuted anyway'*.

#### Section 175

In terms of conflicts of interest, the respondent stated that though some of the directors work as directors at other establishments, *'they would not be given the job if the other post was in the same market as us'*. This is what the company class as a conflict of interest.

Regarding derivative claims, the respondent noted that he has heard of claims against directors for breach of their duties but couldn't recall specific examples. *'I have read some things in the press'*. He did however expect the number of claims to increase in the future.

#### Section 176

The respondent recalled this part of the Act *'but not in detail'*. He was unable to recall how the Company deals with 3<sup>rd</sup> party benefits to directors.

#### **4. Familiarisation/ Guidance**

The company does use external support for both legal and financial matters. The respondent was not sure if his fellow directors have undergone any training related to their duties but *'would expect so'*. He notes that *'a lot of them are directors of other companies'* and as such they would have probably have had access to data, information and training.

#### **5. Overall evaluation- policy objectives**

##### **5.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

In response to this objective the respondent answered that it had been met *'with the proviso that the shareholders are holding [the Company's shares] so that they gain an increase in value, in the NET assets of the business [with a view] to make a sale... we are not here for the long term'*.

##### **5.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent stated in reference to this objective that *'over the past 2 or 3 years the culture has moved on to comply with good governance and the Act has been a part of that'*.

##### **5.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent thought that setting up a small company is now easier, but that *'no matter how skilled one is'* they would still require support in the form of legal and financial advisors in order to make sure one is in compliance.

## **6. Overall synopsis**

The respondent agreed that the Act has both simplified and modernised Company Law and offered the example of *'directors operating more specifically ...it's a plus point in my view'*.

### **Case Study 5**

## **Company that has found changes to the business review difficult**

### **1. Background to company/ respondent**

The respondent is the deputy company secretary and the company is an international concern that is engaged in the development, delivery and support of advanced aerospace and defence systems for land, sea and air. It has 6,500 shareholders and a turnover of around £1,880 million worldwide. The Company's CEO and CFO hold one to one discussions with the top 10 shareholders and voting rights are based on the number of shares owned; different weights are thus assigned to shareholders.

### **2. General awareness / implementation of the Act**

The respondent indicated that it is her duty and part of her role, to keep up to date with Company Law and amendments to legislation. She notes that she qualified in the late 1980s *'so I followed and worked with the 1985 Act a lot over the years'*.

The respondent thought that *'the 1985 Act has been supplemented and amended a number of times and there were a lot of different regulations in different places, so the 2006 Act is meant effectively to pull all that into one place and to simplify Company Law particularly in relation to smaller companies'*.

### **3. Case study focus topic- the business review**

#### **3.1 Change detail**

The business review is collated by several departments and advisors working in different areas of the business with the bulk of it written by the Chief of Staff and Head of Communications. The deputy company secretary oversees and writes specific sections such as corporate governance and reviews the complete document to ensure compliance. However it is their communications team that collates the document before it is reviewed, and the respondent added that they have an outsourced contractor who *'project manages that (collation) for us and gets it printed, integrates pictures etc.'*

The respondent indicated that it is a massive exercise in terms of the number of people and resources involved:

*'Outside of Accounts, you have four or five people who spend an enormous amount of time on the annual report, then there will be a couple of people from my area [Governance], then Communication and Investment Relations and somebody else who looks after social responsibility would be very involved...as well as external help in the form of consultants for things like remuneration report.'*

The respondent commented that the Board of Directors is not involved in the writing of the report and that *'we only take things to them to get them to approve...to make sure we are on the right track... we keep them involved throughout the process'*.

Although the company waits until the end of the year to include the latest financial details, they do *'look at it early to evaluate all the info, sections and documents that it needs to contain'*. The respondent keeps track of all of this through the year to facilitate the operation of collating relevant information and documents and in September sends out a note to all the people involved in the Annual Report and Accounts collation process saying *'these are the sort of things that we need to cover, this is what the compliance schedule is looking like'*.

The respondent furthermore stated that she *'would use a compliance schedule'* containing all the regulations to make sure the review is fully compliant, and notes that the company *'starts on the annual report at the end of September, beginning of October to concentrate intensively on the report'*.



The respondent noted that the company has financial and non-financial KPIs and that the information released in the business review is in fact *'part of a much bigger internal document'* that does not get published outside of the business.

*'The reports contain key points...that can only give you a snapshot of the particular areas at that particular time...but it can show trends'.*

The company has recently striven to make improvements to reporting recently, for example in the area of staff safety. The respondent added that at the last AGM one of their investors asked about the number of accidents they have had and whether they had a problem with health and safety - the company was able to explain reasons for the apparent significant increase as they had tracked trends and had noted the change in logging details which occurred earlier in the year.

In terms of whether the company found preparation of the business review helpful in assessing their performance, the respondent indicated that the company actually reviews their financial, social and corporate responsibilities and status throughout the year and as a result the annual report is a document comprising of all these individual reports. Due to the sheer size of the original master document, *'the reports only contain key points...that can only give you a snapshot of the particular areas at that particular time...but it can show trends...to investors'.*

The respondent believes that the additional material included in the business review has been welcomed by the company's shareholders and adds that, although not all data is passed on to them, shareholders have the power to query things and that the *'company is in frequent talks with the top 10% of them, so that they are kept informed of any major issue'.*

According to the respondent auditors do not concentrate on the business review *'so much...they concentrate more on the numbers'.* The auditors read through the business review document as its being drafted so have a chance to point out any areas where additional information is needed or where the company does not appear to be in compliance.

The information regarding social and corporate responsibility listed in the business review *'is similar but reported with a different focus'* in the Corporate Social Responsibility report.

According to the respondent, the report *'gives an indication of how we approach things...it gives a very useful summary in terms of what the business looks like and what we have done over the year'.* She adds:

*'we are quite a difficult organisation to explain but the business review actually does explain all of the different divisions, how they work, how they contribute to our overall performance...basically how they expect the future to look'.*

The respondent notes the difficulties associated with the preparation of the review in terms of balancing keeping the report down to a manageable size with providing data that meets regulatory requirements and the needs of shareholders.

*'Most of the document included in the report actually forms part of other reports that have hit the board at one stage or another...it's updates, it's KPIs, it's info that you need to see on a day to day basis to manage the business...'*

*'The risks are listed in a two-page section of the review so they are not very detailed but they are the summary of absolutely massive amounts of data.'*

However, in spite of the considerable work involved in the collation of the business review, the respondent is not sure that more information equates to greater engagement on the part of shareholders. She thought that *'as a background piece of information it's very good'* though individual *'discussions with shareholders give them much more in depth information'*.

### **3.2 Costs incurred/ cost benefits**

The respondent did not believe that the changes related to reviews and reports will result in cost savings *'the opposite is actually more likely...you never do see cost savings'*. She notes that every year there are new regulations and that these require time and effort to process in order to be compliant.

*'You can not just pick up the report and accounts from last year, dust it off and resubmit with new numbers in...there is always going to be some element of research'* which will require the input of a number of people within the organisation.

She concludes that *'there is always a cost attached to keeping up to date, to making sure that we have the right information in place...I don't ever see that cost going down'*.

## **4 General evaluation of Act**

#### **4.1 Implementation timing**

The respondent thought the staggered approach of the 2006, with provisions kicking in at different times was actually a positive *'as there is quite a lot of information that one needs to take in and if it was all happening at the same time it would have been quite hard to comply with all requirements'*.

*'This way you can actually focus on the relevant changes at any particular time...you can keep yourself up-to-date more easily.'*

#### **4.2 Familiarisation/ Guidance**

The company use external resources, in the form of legal and financial advisors *'quite heavily'*. The company also employs a Director of Investor Relations to look after institutional shareholders. The respondent indicated that she would always check regulations specific to any task she was attempting to undertake prior to dealing with it.

The respondent also noted that the company relies on a *'precedent database'* that they tend to use quite regularly called the Practical Law Company (PLC), which is an external legal database for *'reference resource'*, which also covers the Companies Act and corporate governance. The respondent *'would refer to the database in virtually every occasion apart when you change Directors' residences as you do that quite regularly'* and she knows the procedures to follow.

### **5 Overall evaluation- policy objectives**

#### **5.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent did not believe that the Act has met this objective:

*'I don't think the Act has done much to enhance investment culture. The new Investor Code is more likely to have an impact on it'*.

She noted that *'the more information, the better for investors but obviously there is a cost attached to it that the company needs to shoulder'* but conceded that *'the investors are paying for it in the longer term anyway'*.

The respondent was not sure that more information equates to more engagement on the part of shareholders.

The respondent furthermore stated that the company has recently changed the way that they run AGMs – while in the past it was done by a show of hands, *'we have changed it this year to voting on a poll because we think it's much more representative of what our shareholders think'*. With the introduction of poll voting the company is *'getting a much stronger feel of what the total base of our shareholders is actually considering...and the proxy voting rights have picked up quite a lot'*.

The respondent concluded that *'changes in corporate governance rather than changes in the law... will have a more profound effect on shareholders' engagement'*.

With regards to reporting, the respondent noted that the company is already making reports available in electronic format and that PDF copies of the annual report are listed on their website *'which I think enhances the value of the annual report because people can just go to the section or area they are interested in...they can easily find what they need rather than having to go through paper copies of the document'*. The respondent confirmed that *'the majority of their shareholders are now accepting electronic communications as opposed to paper as 'it saves us money doing that and it saves the environment'*.

## **5.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

According to the respondent *'the Think Small First approach has actually caused a few problems for the bigger companies'*. As an example she notes the issues encountered when reporting on share allotments – *'the forms only allow you to allot 3 entries at any one time...we allot virtually daily...it's a very laborious task for us and quite frankly I cannot see the value to anybody of the information that we are providing'*. The respondent notes though that this is an area that BIS is already looking to reform.

## **5.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent noted that the company uses *'quite a number of subsidiaries, a number of which are dormant...and the Act has allowed us to reduce spend in these as it's easier to make them dormant...that's the sort of useful benefit the Act has introduced'*. When asked if the Company intended to close the dormant companies making use of another provision of the 2006 Act, the respondent notes that she is aware of the changes related to this area and that the *'winding down of companies seems a lot easier'* but that she has not made use of it as they *'still have tax liabilities on those companies'*. The company reviews the list of dormant companies every year to see if they can be closed and is likely to make future use of the capital reduction by solvency statement.

On whether the Act has made it easier to set up new companies, the respondent notes that they *'have set up a new company under the new regulation and it does actually look like it's a very easy process... we did it within 24 hours... all the forms are electronic'*.

To conclude the respondent notes that she recently had to set up a subsidiary company in India and *'they are 40 years behind us...although their regulations are similar to what we used to have in place... and you then realise how laborious and administratively difficult it is under those regulations. It is then that you really see the benefits of our new regulations!'*

## **6 Overall synopsis**

The respondent noted that the Companies Act 2006 has indeed simplified Company Law:

*'Just take as an example how easy it is to set up a new company, or process all your forms online...so yes I would say that the 2006 Act has totally simplified and modernised company law'*.

She also made the point that *'it's always quite difficult when the regulations come in because you have new rules to follow, but as it settles down...it will actually make things quite a lot easier'*. Furthermore she thought that in order to take full advantage of the new provisions, there are a number of changes a company needs to make: *'you do need to change your constitution, your articles and we have a number of dormant companies so that would actually help us – that they are all using the same constitution, that they do not need to keep checking to make sure we have the right number of directors'*. However she noted though that *'it does require a lot of upfront work to take advantage of [the 2006 Act]'*.

## Case Study 6

### **Company that made changes relating to Business Review and identified benefits for them or their shareholders**

#### **1. Background to company/ respondent**

The company is a development and construction holding Plc Company comprising seven active companies and eight dormant companies. The company was incorporated by Companies House in 1965 when the current chairman took over and now has an annual turnover of just less than £5 million. The respondent is the Company Secretary and Finance Director for the group. In total they have 40 employees and 6 directors.

The company only has one key shareholder who is also the Chairman; other shares are held within a pension fund.

#### **2. General awareness / implementation of the Act**

The respondent became aware of changes in Company Law primarily through the Association of Certified Accountants, who '*bombarded her with stuff*'. She also files her accounts online and frequents Companies House website, but generally only if she needs to look something up. She believes the purpose of the Companies Act 2006 was to re-write the important parts of the 1985 Act, and to streamline certain ideas and codify certain areas.

#### **3. Awareness and adoption of / compliance with specific measures**

The respondent, through the telephone survey, was found to have a high awareness of specific measures introduced through the Companies Act 2006; she was aware of changes to directors' duties, the business review; access to company information including reduction in filing times; facilitating electronic communications; simpler law/accessibility; directors' addresses; trading disclosures; register of shareholders/annual return, and auditor limited liability agreements.

As a company, changes had been adopted or complied with across all measures except that of facilitating eCommunications.

#### **4. Case study focus topic- business review**

##### **4.1 Change detail**

Prior to any changes, the respondent used to compile just one business review for the group; now she must submit a review on each company within the group. The former requirement gave no indication of what the group was doing.

The business review is prepared by the respondent (company secretary/ finance director) and the managing director, and then sent to the board for approval. The draft can be drawn up during the course of a day, and it is also then sent to their external auditors for approval.

The respondent didn't feel that too much more information was required, apart from the KPIs which they didn't have in place beforehand. As a qualified accountant, the respondent understands the requirements but felt that for the case of smaller companies the auditors would be asked to write it. Despite her qualifications, the respondent still checked with their auditor on the extra information required, as she wasn't entirely sure what had changed.

The respondent's role is to draft the business review initially (usually two pages in length). She thinks that in the last few years they have had more to say thanks to KPIs being introduced. An example of a performance area that they monitor over time is the percentage of vacancies in their commercial property portfolio. However, given the nature of the property industry, they have and continue to change their KPIs in light of recent developments.

The respondent believes there to be benefits of the extended business review to creditors who do searches, banks and the Inland Revenue. Given they only have one shareholder, who is within the family business, he is already aware of all information included with the business review. However, when asked if she thought the business review to be valuable for shareholders of other companies where more than one, she replied *'it must be beneficial- they're relying on it for dividend income'*. Furthermore she added that they'll obviously be interested to see how the company is performing, and that it has investment value for public companies.

## **5. General evaluation of Act**

### **5.1 Implementation timing**

She did think that time-wise, the Act was too drawn out, which meant you *'took your eye off the ball'*. She also found it difficult deciphering what was new.

## **5.2 Cost incurred/ savings realised**

In terms of costs incurred through familiarising herself with recent changes in Company Law, the respondent said that this was only her time and that of the auditor's in editing, but *'that was part of his duty anyhow'*. The auditor and accounting press were both cited as sources of awareness of, and guidance through, the changes.

## **5.3 Familiarisation/ Guidance**

They have a legal partnership of advisors with whom they consult and seek guidance. One of their non executive directors was also formerly a solicitor within the legal partnership.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent had no opinion on this objective.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent agreed there will be better regulation, but wondered if smaller companies would in fact be aware of the changes made.

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent thought it was now easier to set up a company, particularly because you can have one director and don't need a company secretary. She was also talking from personal experience, having just set up a new company late in 2009 (separate to the group); the process was however all carried out by their solicitor.

However, she didn't agree that the Act has made it any easier to run a company as she thought that one still has to deal with all government bodies.

## **7 Overall synopsis**



Overall, the respondent believed that the Companies Act 2006 should indeed modernise and simplify Company Law but *'it's not something you look at every day'*. She also added that there had been no major impacts, but that it wasn't too onerous (regarding the business review) to comply.

### **Case study 7**

## **Case study 7: Company that has made use of the new provisions relating to eCommunications**

### **1. Background to company/ respondent**

The organisation is a high profile FTSE 100 retailer which has over 200,000 shareholders, plus a further 40,000 nominee shareholders. Many of the shareholders are also customers, which impacts shareholder engagement and communication strategies. Three members of the Governance team were interviewed.

### **2. General awareness / implementation of the Act**

The respondents had a high awareness of the Act and took a keen interest from the start of the consultation process culminating in a one-page briefing which they used to track progress over the 3 year implementation period. The Board was kept up-to-date on issues and were provided with a written paper which tracked the progress relating to all the relevant aspects of the Companies Act 2006.

*'Our approach when anything like this happens is to continually track what is going on. Clearly we are advised by our lawyers, the Institute of Chartered Secretaries because we are members of that, and you watch what is happening in the press, so there is a drum beat out there that keeps you informed, and then at certain times you need to inform the board, and that's our role'*

### **3. Awareness and adoption of / compliance with specific measures**

The respondents had a detailed knowledge of all of the measures relevant to a quoted company and the organisation had made changes to adopt all measures with the exception of the introduction of an auditor limited liability agreement.

Details of the adoption of specific measures are provided in Sections 4 and 5.

#### **4. Case study focus topic- eCommunications**

##### **4.1 Change detail**

The organisation consulted shareholders in 2007 by means of a written communication which was sent out with the interim dividend payment. This had the dual benefit of saving mailing costs and ensuring that individuals would read the mailing (given that it was in with their dividend). They now send out around 5,000 hard copies of the Annual Report (previously 20,000) and 40,000 copies of the Annual Review (previously 220,000). The respondents identified the notable changes the Companies Act 2006 had brought about with the introduction of the electronic communication enabling provisions.

*'Previously we were required to send endless amounts of information to shareholders, whether they wanted it or not. This was inefficient, wasteful and went against our environmental objectives. Companies were just churning out endless amounts of paper. In my opinion, the introduction of electronic communications was a fantastic change for all companies.'*

##### **4.2 Cost savings/ overall evaluation of measure change**

The organisation has taken the opportunity to tailor its communications to shareholders' needs, providing the full Annual Report to those who request it but also keeping those shareholders who did not respond to the consultation engaged by sending them a much shorter, retail shareholder focused document. There was awareness that some companies had retained the cost savings and simply send a proxy card to those defaulted to electronic communication. However, this company had taken the active decision not to:

*'The year end mailing is always going to be seen as a way of promoting the company's business and ethics as well as communicating the financial results'*

The organisation also took the opportunity to use the money 'saved' to revamp the corporate element of their website and further develop the online version of the Annual Report. They feel these are now much more user friendly, provide greater transparency and are much improved to meet the needs of the wider stakeholder group.

*'So I wouldn't say we've taken a huge pot of money from this and said 'Thank you very much, that's a nice saving', I'd say we've taken a reasonable amount of money and then invested that in the online communication so we can tell the people who actually want the information more'*

In terms of shareholder feedback, the company mails a card with the Annual reports asking shareholders to raise any issues they would like to be discussed at the AGM as well as requesting feedback on whether the documents they receive provide sufficient information for their needs. Shareholder responses confirm that the balance has generally been achieved.

## **5. General evaluation of Act (include other measures where others asked)**

### Directors' duties

There was a belief that, whilst the company has a culture which focuses on responsibility, the introduction of codified directors' duties has had an impact on directors' behaviour generally:

*'Definitely directors are much more wary now about the wider range of aspects they need to take into account in decision making, which is why our governance is structured in the way it is, to get more information into the boardroom'*

As a result of the Board Performance Review in 2009 Directors decided that there was a need to refocus on three aspects of their role; demonstrating that they are independent, informed and responsible. The system of governance has been designed specifically to support this. There is a system of committee structures, for example an audit committee and a 'how we do business' committee which involve people not confined to the boardroom. These make recommendations to the Board and so ensure that directors get access to a broad range of information.

Individuals writing papers for directors who present to the Board have been advised of the duties that the directors have and reference to these is included in their papers. This ensures that the Board is aware of any obligations that they have under these duties when they are looking to sign off decisions.

*'So I think you need to think carefully if you are going to give your directors sufficiently wide information, how that information actually makes its way to the boardroom'*

The issue of the impact of the recession was mentioned in relation to this discussion:

*'And I think that's probably the untested part of the Act and I'd be interested to see what some of the results of the decisions that have been taken during the economic downturn are going to be for instance will people think directors did the right thing'*

Potential derivative actions against directors for breach of duties undertaken by shareholders were also discussed. The respondents indicated that they are wary about the prospect of actions being launched by activists looking for publicity but have adopted a 'wait and see' approach to the issue. They were aware that there is a two tier approach and that any actions directed at other companies have not got through the first barrier:

*'I think to be fair to BIS and the Act generally, a lot of these claims that can be brought from the campaign groups of smaller shareholders do have these safe harbours, where a vexatious claim is brought, it can be thrown out'*

### Business review

The respondents felt that the measures relating to the business review have had an impact on reporting decisions in terms of encouraging a greater focus on the reporting of future plans and key performance indicators. The recent announcement by the coalition Government that the OFR is being reintroduced was noted, with the need to revisit reporting requirements as a result. This has implications in terms of their three-year planning process for reporting and associated concerns that there will be more prescription in terms of what is required to be included in reporting moving forward.

The organisation had made a number of changes as a result of the business review including working with new designers to ensure a more coherent narrative in the Annual Report (particularly for those people who are relatively unfamiliar with the organisation):

*'The front half is much more written to people who perhaps don't even know who or what the Company does, we used to just launch straight into how wonderful we are without actually explaining to people where our main businesses are, how many stores we have, what our line of business is, what are the objectives of the Board. So working with our new designers, about two years ago we actually started being a lot more coherent in telling the story up front, and I think it has been a useful development'*

Additional information was also included on risks and uncertainties relating to the business. The respondents indicated that there were some difficult decisions to be made in terms of how much information to share and that providing as much information as possible whilst satisfying the requirements of legal and financial advisers can be a fine balance to achieve:

*'that was a big chunk that we had to introduce, the risks and uncertainties, we've done some more work on that this year, and there is a debate to be had, how much information you put in here and is it relevant information? We wanted our shareholders to have confidence in our risk management and mitigation activities, so that was our approach last year. Whatever we want to do, the lawyers will push back and say 'Well actually, are you sure you should be saying that?' or your auditors will*

*be saying something, so there are lots of tensions around doing the right thing, but I think it's moving, it's always an evolving journey'*

### Enfranchising indirect investors

The measures relating to enfranchising indirect investors were also discussed, particularly in terms of their enhanced rights to information. The organisation acted on this in 2005 when they extended their offering of vouchers that gave shareholders an in-store discount.

They invited nominee companies, which hold shares on behalf of indirect investors, to provide details of those beneficial owners who would then receive discount vouchers. Details were provided via a secure website created specifically for the purpose. The nominee companies were also given the option of not providing contact details and forwarding vouchers to the beneficial shareholders themselves directly.

However, the organisation felt that nominee companies are generally reluctant to enfranchise their beneficial shareholders unless there is clear or specific reason to do so. Although the discount voucher initiative worked well it was expressed that is not a true reflection of indirect investors receiving information from the Company. Those receiving information rights are in the low 100's, the number of beneficial shareholders who received the discount vouchers was close to 100,000

*'When things are going well, they don't want information, but when things are going not so well, suddenly they do, and I had lots of calls in 2004 from investors who didn't get an operational booklet that we published because they weren't on the register, they didn't realise the implication of this'*

The regulations relating to enhanced proxy rights for indirect investors had little impact as they had previously been allowed to attend and vote, even though they were not legally entitled to speak, as this was viewed as best practice way in terms of the management of AGMs.

*'You don't particularly want to stand there and say 'No, you're second class' – so you treat everybody the same and take everybody into consideration as much as possible'*

### Directors' addresses

There were no real changes relating to Directors' addresses as the company already had confidentiality orders in place for all of the group directors which just washed through to the new Act. In terms of subsidiaries, they are will be changing the addresses registered for those directors to the service address as the annual returns are completed this year. They feel is important for individuals' security given the high profile nature of the business.

#### Auditor limited liability agreements

The issue of auditor limited liability agreements has dropped down the agenda for the organisation:

*'I think with the SEC requirement that liability agreements were not put in place with company's auditors has pretty much killed it for now, I don't know if they'll come back. The auditors seem to have gone fairly quiet on it, they all kind of got fairly excited about it and then it disappeared'*

#### **5.1 Implementation timing**

There was a general feeling that the phased introduction of the Act was beneficial and that the process was well managed given the volume and extent of change. This allowed for the Governance team to familiarise themselves with the changes and also ensure that any relevant information was disseminated internally.

*'The other helpful thing that has come through is only introducing legislation twice a year, April and October, because you can plan a lot better'*

*'If you're going to change anything it takes time to change, and certainly time to persuade those that need to be persuaded that you need to change. So that may be your Investor Relations Team, your Communications Team, the Directors, there are lots of people that you need to get on board with this'*

#### **6. Overall evaluation- policy objectives**

##### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

**6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach' / Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondents feel that the Act has had a positive impact on private companies in terms of making it easier for companies to run their businesses.

*'for the small private firm where the husband was a director and the wife was the company secretary, getting rid of the company secretary for private companies was seen as a good thing, but within a group structure what we've done is kept the company secretary on just because it's an extra signature to sign off various documents, and it adds no cost or takes any off in a group kind of structure'.*

They are in the process of changing the articles at subsidiary level to take advantage of the new regulations relating to meetings and resolutions:

*'At group level, we've had to change the articles – because the act was implemented in 3 or 4 tranches – we have held back changing the subsidiary articles until the final provisions were introduced. For these subsidiaries it was not efficient to make changes to the Articles each time the new set of provisions were introduced.'*

## **6. Overall synopsis**

It was noted that the Act was the biggest piece of legislation that has gone through Parliament and, by its nature, required a large amount of familiarisation. However, it was also commented:

*'[Respondent 1] a lot of the provisions which were once contained in the articles have moved into the Act, which means that you can take some of the duplication out of your articles and just rely on the Act. I think it's a positive thing'*

*'[Respondent 2] maybe everyone can be reading the Act now much more than they ever had to, because they can't rely on the articles any more, but that's unifying in its own way isn't it'*

Positives were also identified in terms of the Act protecting organisations from legislation coming from Europe:

*'We are very positive about the Act, we are real fans of the Act, and because it also protects us, it's gone through such a rigorous review it protects us to some extent from what's coming from Europe, because they will introduce legislation in Europe, like the deadlines for requisitioning for example, and you will have a shareholder rights directive coming from Europe, well actually we do things in a different way over here in the UK and we have fought hard against shortening that deadline, because there is no way with a register our size we could have turned documents around to meet those deadlines anyway, and an air of caution around what is appropriate in the EU may not be appropriate here'*

## Case Study 8

### Company that has made changes to resolutions and meetings

#### 1. Background to company/ respondent

The respondent is the Company Secretary and Regional Finance Director and the company is a privately owned medium sized company originally founded in Denmark offering paint and paint solutions to marine customers. It has a turnover of £15 million and 50 full-time staff in the UK. It was incorporated in the UK in 1945.

#### 2. General awareness / implementation of the Act

The respondent indicated that he found out about the 2006 Act *'just through general awareness of the accounting press and having seen some of Companies House's forms changing – in terms of structure and layout'*.

#### 3. Awareness and adoption of / compliance with specific measures

He felt that he found out about the changes almost by accident and that they had received a small list of implications from their auditors but nothing extensive. In spite of this generally low level of awareness the company has made some small changes as a result of the introduction of the Act, including changing procedures relating to resolutions and meetings. The respondent also looked into the possibility of removing himself from the register [as *Company Secretary*] but decided at the moment that it makes more sense to still have himself down as a signatory.

#### 4. Case study focus topic- resolutions and meetings

##### 4.1 Source of awareness of measure

The respondent found about the changes regarding resolutions and meetings somewhat accidentally as the company was trying to get rid of an old inaccurate record on Companies House regarding a mortgage debenture and he found a new form on their website enlightening him of the changes.

##### 4.2 Change detail



The company still holds annual general meetings (AGMs) but following the 2006 Act they are *'nowhere near as formal as they used to be'*. The respondent feels that a less structured approach has resulted in less paperwork and bureaucracy to deal with. They have had no negative repercussions from the change with no shareholders raising concerns about this less formal approach to AGMs.

The organisation has also used written resolution procedures using an electronic voting method. The motion did not carry any extraordinary procedures and was circulated electronically with no additional information.

They were aware of the need to send through the proposed resolution to their auditors and this procedure was followed. Members have the same number of votes whether passing a poll or a written resolution.

#### **4.3 Cost savings/ overall evaluation of measure change**

When asked about the cost-benefits of the new approach, the respondent indicated that there had been no obvious cost-savings to date because senior management have to spend time familiarising themselves with the new system. Whilst they have not incurred costs for any external advice, the AGMs were previously held together with other meetings and so their abolition has not resulted in any tangible cost-savings. The respondent is unable to quantify any actual cost benefits resulting from changes to resolutions and meetings, but notes that the diminished requirement for paperwork has resulted in time savings *'which are nearly impossible to quantify'*.

### **5. General evaluation of Act**

#### **5.1 Cost benefits**

The respondent thinks that once new procedures are in place and the dust has settled, some ongoing cost savings might become apparent.

#### **5.2 Familiarisation/ Guidance**

No external guidance was used in relation to changes made regarding resolutions and meetings; this was an in house process and decision. The respondent is however due to attend a brush up course on any changes and amendments run by a large accounting firm.

The respondent did however note that he has personally spent ‘some time’ familiarising himself with the amendments introduced by the Act but was unable to quantify the amount. He added that the entire Financial Department would have been involved in familiarisation activities too.

Regarding guidance provided by Companies House, the respondent stated that he finds *‘the online content very useful’*.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

According to the respondent the 2006 Act has not had *‘a positive or negative effect’* in terms of either investment culture or shareholders engagement. In his view, *‘they [shareholders and possible investors] are driven by one thing and one thing only – profit’*.

### **6.2 Objective 2: To ensure better regulation and a ‘Think Small First Approach’**

The respondent noted that *‘simplification has to help’*.

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent agreed that the Act has *‘definitely made it easier’* to set up and run a new company.

## **7. Overall synopsis**

Overall, the respondent felt that the 2006 Act, especially with reference to resolutions and meetings, has increased flexibility *‘to some extent’* and that simplified and modernised company law *‘which can only be a good thing’*.

*‘It’s modernised things a little and [allowed us to] do away with some of the stuffy nonsense.’*

*‘It’s a much more modern approach...and it’s been simplified though not overly simplified definitely.’*

## Case Study 9

### Company that has made changes to meetings and resolutions

#### 1. Background to company/ respondent

The organisation is a private company working in the hospitality arena with 350 employees. It was incorporated in 1983. The limited company is owned by a holding company. The respondent is the company secretary and the personal assistant to the Chairperson.

#### 2. General awareness / implementation of the Act

The respondent was made aware of the Companies Act 2006 changes through her advisers and her attendance of a Companies Act implementation roadshow.

#### 3. Awareness and adoption of / compliance with specific measures

The respondent was aware of all measures asked to a large private company in the quantitative survey. They have taken steps to making changes relating to directors' duties, facilitating electronic communications, resolutions and meetings, directors' addresses and the register of shareholders / annual return.

#### 4. Case study focus topic- meetings and resolutions

##### 4.1 Source of awareness of measure

The respondent became aware of the changes to meetings and resolutions through her attendance of a roadshow and other courses.

##### 4.2 Detail of changes

At present the company still holds AGMs in accordance with their bank's request to do so though they have passed a resolution to abolish them. The respondent feels that there are no risks associated with not holding AGMs '*as shareholders are the company's directors*' and they have been promised '*an annual meeting instead of an annual general meeting instead...to keep them informed*'.

No external advice was sought relating to this measure as '*we read through the Act and we understood it and were able to explain it to the directors in layman's terms*'. She added that Company Law '*is now a lot easier than it was*' prior to the implementation of the 2006 Act.

However, the respondent noted that she did speak to Companies House to get some clarification regarding extraordinary meetings.

The respondent confirms that a copy of the proposed resolution to abolish AGMs was sent to the company's auditors in advance of the shareholders' vote and that they were happy with it and raised no query. The respondent indicated that voting rights vary depending on what is being voted: *'most times it's one vote per person, no matter how many shares you have got'*.

#### **4.2 Cost savings/ overall evaluation of measure change**

The respondent does not believe that there will be costs savings as a result of not having to hold AGMs as *'these are internal meetings anyway'*.

She believes that the changes to resolutions and meetings have not really affected the way the company operates and that in terms of flexibility *'it seems very much the same'*. She notes though that they haven't had to do anything 'major' yet so accepts that her view might change once new and fundamental resolutions are passed in the future.

### **5. General evaluation of Act**

#### **5.1 Other measures**

When asked what the implications were of directors having the ability to use their work address instead of their home address, the respondent noted that *'it's a good thing for proper companies as [directors] get a lot of junk mail and marketing stuff at home, but for bad companies they could use a PO Box or something similar...or change their names slightly to fool the system'*.

She felt that there should be some form of checks as when a company is registered at Companies House there is an implicit trust that it is bona fide:

*'Recently I looked up this guy who was a director of a company that had registered 2 different dates of birth...you could manage in a roundabout way to find out and track things like different addresses...but I don't know what you could do to actually [ensure the bona fide of a company]...maybe having to enter some ID of some sort...like a passport number...it would be practical as we take copies of all of our directors' passports'*

## **5.2 Costs / benefits**

According to the respondent the Company has incurred few additional costs to comply with the Act as they did not have to radically amend internal systems and procedures as *'everything stayed pretty much the same'*.

No external support was sought as the Act was *'so easy to understand'*.

## **5.3 Familiarisation/ Guidance**

The respondent noted that she attended *'various courses that explained the different elements of the Act and the different stages...they were fantastic in that they explained the differences rather than look at the whole Act...we were walked through what was changing...it was very, very well done'*.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent believes that the Act has met this objective but that it is more applicable for public and quoted companies. She believes that *'especially if you have a bank investor... they would probably be more interested'* as they would be able to access a number of documents and data relating to the company.

The respondent believes that for them enhancing shareholders' engagement *'is very difficult as we are already a very open company...we share figures with the whole company and the shareholders so they are kept up-to-date with figures every single day...therefore no real difference'* in this regard.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent noted that, though the Act has simplified Company Law, no major changes have been felt by the company as they are relatively small. In terms of AGMs or company secretary *'a larger company would probably feel [the effects of the changes] more...as we do things exactly the same way'*.

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent felt that the 2006 Act has simplified things in terms of directors' duties, company secretaries and capital maintenance and that most of the information relating to changes is easily accessible on the Companies House's website.

## **7. Overall synopsis**

The respondent stated that overall the 2006 Act *'is so easy that we keep looking at the book [listing all the changes] and thinking – are we sure we are doing it right? It can't be that easy'*.

In spite of her general positivity she did feel that whilst it had made it easier to set up a new company, some might abuse this provision to 'do dodgy dealings' and that *'more checks might be needed to ensure you are dealing with a true person...a real company'*.

## **Case Study 10**

### **Company that has made use of capital reduction by solvency statement**

#### **1. Background to company/ respondent**

The respondent is the Chief Financial Officer and has been with the Company for roughly five years. The organisation is a private limited large company which specialises in property investment and development. They cover the UK's retail, industrial and development sectors, as well as major investment programmes in Germany. Additionally the company offers in-house construction management expertise.

The company was originally incorporated to Companies House in 2001. Another part of the group, a 'new company' was further incorporated in 2005.

The company has a turnover of £60 million and four shareholders; three individuals and an Employers Benefit Trust that owns some of the shares on behalf of the employees. Their target customers are mainly large retail businesses.

The Company uses both legal and financial advisors.

## **2. General awareness / implementation of the Act**

The respondent thought the 2006 Act was introduced *'to do two things: one to modernise [company law] and two to make things a bit easier in terms of cutting red tape'*.

## **3. Awareness and adoption of / compliance with specific measures**

The respondent was aware of all changes applicable to large private companies. Apart from adoption with changes to capital maintenance, the company had complied with mandatory changes to the business review, and adopted changes with regard to resolutions and meetings, and trading disclosures. The respondent had little further to add on changes made, but did think changes introduced to capital maintenance were the most beneficial in terms of costs savings and flexibility.

## **4. Case study focus topic- solvency statement**

### **4.1 Source of awareness of measure**

The respondent attended several seminars and training sessions on the Companies Act 2006 run by the law firms his company deals with and so became aware of the process of reducing share capital through this means.

### **4.2 Change detail**

With regards to capital maintenance, the respondent noted that *'the way we do things is we incorporate a new company to buy a property, then we would buy another company and incorporate that and so on so that each company has its own property. As we then sold these properties, we were left with a lot of dormant companies that don't do anything. Some of them...had been founded by capital, shared capital and shared premium, other were founded by loans – so that they might just have £2 per share capital'*. The company wanted to remove all of these dormant companies that were no longer needed and were advised by their lawyers to make use of the capital reduction by solvency statement.

According to the respondent the company's corporate lawyers took care of all the details and paperwork, and the three directors/shareholders reviewed, commented and signed off the documents once they were satisfied all was in order. The respondent stated that as head of

finance he confirmed to the two directors that he was satisfied all the companies were solvent and that all creditors had been paid. Individual solvency statements had to be created for each of the companies Edinburgh House wanted to shut down.

In terms of meeting the requirement for the solvency statement to not be made more than fifteen days before the date of the special resolution and that it must be available to the shareholders when they vote on the resolution to reduce the company's share capital, the respondent explained that the solvency statements and the special resolutions were all done on the same day and that all shareholders accepted the resolution.

The respondent was confident that directors had taken into account all of the company's liabilities (including contingent or prospective liabilities) when forming the opinions contained in the solvency statement, and he was happy to confirm that the whole of the portfolio up for capital maintenance reduction were solvent. Furthermore, he added that the three main shareholders all work for the company and are fully aware of the status of their portfolio.

The respondent had no concerns at all of not having the security of court involvement in the revised process, and thought that the current economic situation has increased the likelihood of take up of the capital reduction procedure via solvency statement, *'because of the economic climate this process will likely be used more and more...evident cost and time savings'*.

When asked if in his view a new business might find it difficult to understand the Act and its provisions, the respondent noted that this very much depends on the person who is behind the new start up:

*'If it's someone like Dyson, who invented a new vacuum cleaner, his background is not legal or financial so he would probably have a nightmare'* he continues *'my background is legal and finance so that's fine!'*

On the matter of his solvency statement experience, the respondent concluded *'I could imagine it could be a bit daunting for somebody without that sector knowledge and experience...they know their business but would need to employ advisors and lawyers to sort it out...but the 2006 Act has made things a lot simpler...that process has been massively streamlined... the changes should help'*.

#### **4.3 Cost savings/ overall evaluation of measure change**



The respondent felt that the whole process was very simple and much faster in terms of timings, compared with having to go to court, taking just two days in total. He felt it was difficult to estimate how much they had saved in cost terms accurately but that it had probably saved them from employing another member of staff in order to deal with associated paperwork. According to the respondent *‘even the lawyers said that [the new process] was a lot simpler...and they had gone to court in the past’* so it was easy for them to make comparisons.

Furthermore, he indicated that the process would not have been financially viable or of interest to them if they had had to use the court system:

*“This is not something we would have done – the cost would have been enormous...instead we would have probably had the companies liquidated...but then we were looking at paying liquidation fees’.*

The respondent confirms that he would definitely recommend the revised process and adds that *‘since we have done it, I have read in the professional journals that I read more and more people writing about it...it’s becoming more widely known and used’.*

## **5. General evaluation of Act (include other measures where others asked)**

### **5.1 Implementation timing**

The respondent noted that the staggered approach was actually quite confusing and that he would have much rather have *‘all in one go, even if there are loads of changes’*. He thought however that a smaller company would not struggle to implement all changes at once as *‘the changes that the 2006 Act brought are about practically running your business, so as long as you are doing a good job...not doing fraud ...there wasn’t that much that really impacted you’.*

### **5.2 Cost benefits**

Despite hypothetical cost savings associated with the solvency statement, and thinking that Company Law now is a lot less bureaucratic, the respondent thought that costs were still being incurred due to time spent complying with Company Law: *‘the admin that comes with it...there is a lot still to do, a lot of paperwork...– you need to file accounts, keep statutory accounts, the auditors have to look at all the different aspects... it still takes a lot of time.’*

### **5.3 Familiarisation/ Guidance**

The respondent had spent little time had familiarising himself with the capital reduction part of the 2006 Act as this was '*pretty straightforward*', thanks to the vast majority of the work (paperwork/documentation) being put together by his lawyers.

A legal team ensures the company is compliant at all times and auditors check their status every year. The respondent added that '*we use lawyers for almost everything we do*' and noted that though this means spending significant amount of money on fees '*the cost of getting it wrong is simply too high*'.

The responded furthermore commented that '*if it is a standard thing that we have had lawyers deal with in the past and we have got documents we can easily replicate then we do that, but normally we use different firms to help us*'.

He concluded by stating that the company uses different firms dependent upon their own requirements and the firms' specialization and brought as an example a law firm '*that we use exclusively for employment law and issues*'.

Overall, according to the respondent, the Companies Act 2006 modernised and simplified Company Law and made it '*less bureaucratic*' but he has experienced no changes in his day to day activities.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

With regard to the first objective the respondent exclaimed surprise that this was in fact an objective. He added that '*the Companies Act 2006 will struggle to achieve that...long term investment culture is based on the business...the way a business is run... I don't think this is a sensible objective*'.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

The respondent was more positive about the second objective, commenting that '*this has probably been achieved*'...but that '*the regulation is still there – you need to file accounts, you need to have protection for creditors and all the other things – but it's just a bit easier now*'.

He thought that specific changes such as the removal of the requirements to hold AGMs and to have a company secretary, and being able to register directors' service rather than home addresses, were '*sensible changes*' and added that '*in the case of AGMs, small companies don't really need them – you are not going to put any creditors at risk, you are not going to put any other stakeholders at risk, so it's [a] sensible [change]*'.

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent felt that the Act has indeed made it easier to set up and run a company – though he noted that legal and financial support, in the form of advisers, will be required for founders with little or no sector experience.

## **7. Overall synopsis**

Overall the respondent completely agreed that the 2006 Act has both modernised and simplified company law and noted that the process is now much more streamlined.

He thought that there is less of a burden on companies in terms of administrative tasks to deal with.

In terms of whether the Act should have been targeted to specific sectors or industries or sizes of companies, the respondent noted that an Act should.

In sum, the respondent felt that '*what we have got now is about right. I don't think you should remove regulations....when you set up a company that has limited liabilities you have to obey by a set of rules*'.

## **Case Study 11**

### **A company that has undertaken auditor limited liability agreement**

#### **1. Background to company/ respondent**

The respondent is the Company Secretary and the organization provides high-profile sporting events and activities in Scotland. It is a public company with a turnover of almost £30 million.

## **2. General awareness / implementation of the Act**

The respondent became aware of changes in Company Law via Companies House publications; BIS publications or alerts; and his own institute.

## **3. Awareness and adoption of / compliance with specific measures**

The respondent, as discovered through the telephone survey, was aware of changes to directors' duties; the business review; access to company information including reduction in filing times; directors' addresses; register of shareholders/annual return; and auditor limited liability agreements.

The company had made changes to all of the above bar directors' addresses and the register of shareholders.

## **4. Case study focus topic- auditor limited liability agreements**

### **4.1 Change detail**

The auditor limited liability agreement was introduced in 2008. The agreement was first suggested by the auditors themselves, but the company board had several accountants sitting on it and all were aware of the precedent that the demise of Arthur Andersen had created. The management team, therefore, understanding of their auditors requesting such an arrangement.

For both the company and the auditors, the motivation for introducing the agreement was financial. The agreement helped protect the auditor, but it also meant that the costs of audit work were kept under control. The alternative for the company was continuing with their existing arrangements but fees for audit increasing significantly. No reduction in fees was achieved as a result of the agreement, but an anticipated rise in costs was avoided.

The agreement in place in this instance is quite straightforward, a 'plain vanilla' agreement covering audit and some tax advice. Under the agreement the auditor's liability is capped rather than liability being shared.

There was only limited debate at board level on introducing the agreement. The finance sub-committee worked over the agreement in detail and this was passed to the board for approval. As mentioned, as part of their own Continuing Professional Development, the members of the board with accountancy backgrounds were aware of the increasing

pressures on auditors following the Arthur Andersen debacle. No external advice was sought or considered to be needed. The shareholding structure of the company meant that no shareholder approval was required to make the change.

#### **4.2 Cost savings/ overall evaluation of measure change**

Overall, the company is happy with the agreement. It has allowed them to retain their existing auditors while avoiding a substantial increase in fees and with no anticipated negative consequences for the firm, given their lines of business are mature and well understood.

### **Case Study 12**

## **Small company agreeing that the Act has simplified**

### **1. Background to company/ respondent**

The company was a start-up 10 years ago which sells software to collect and manage clinical survey data over the internet. There are 38 staff in the UK plus eight in the US. There are no directors based in the US at the moment but this may change in future. It has a 'fairly standard' company structure with one majority shareholder who is not involved in the business and six other shareholders.

Main customers are research companies (e.g. small private enterprises spun out of universities) and big pharmaceutical companies (who outsource their analysis) and big pharmaceutical companies' sub-contractors who might have specialist needs.

### **2. General awareness / implementation of the Act**

The Companies Act is not the most 'fresh in mind'. When it was about to be introduced the respondent, the Managing Director, went to a number of presentations by law companies about what was coming and he was aware of the phased introduction. He still has a notelet, an easy reference tool, that he has to hand which outlines all of the key changes. He is aware that it's all implemented now.

### **3. Awareness and adoption of / compliance with specific measures**

The respondent was aware of all of the changes applicable to a small private company and that they have made changes to all measures apart from company secretary and trading disclosures.

### **4. Case study focus topic- simplification of processes**

The respondent ran through the various measures relevant to a small company:

#### Meetings and resolutions

The annual meetings have been *'effectively dropped as they weren't particularly useful'*. However the respondent went on to say that this had little cost or other impacts as they used to hold their AGM tacked on at the end of another meeting during the year just to 'tick the box'.

They have made a number of changes using written resolutions a) changes to the articles of association b) a shareholder agreement which was revoked using a more simple resolution process. This made more difference to them than the AGM change; particularly shorter notice periods which have increased flexibility.

#### Directors' duties

The company does not behave markedly differently in terms of directors' duties as *'In some ways a responsible director ought to have been doing this before the change in the law so I did not see this as a massive change in the way I thought about my duties but it is a good thing that it's been codified better'*.

As an organisation they do not do any more in terms of demonstrating how they meet obligations – *'we have always had these processes in place because of the type of organisation we are and where the directors came from. We are not an old-fashioned type of company and we are all aware of the need to be seen doing the right thing and to record it...It was the right sort of culture before'*.

There was no bespoke training or advice and support related to this measure but all directors went to a morning seminar run by their lawyers.

They have not drafted a formal conflict of interest policy but this is on the agenda as they may have issues now that they are incorporated in the US where they may take on a director. There are plans to review with their lawyer when they meet later in the year as the respondent is the only UK officer of the incorporated office in the States with his US lawyer who is the only other officer. It is a 'get started' arrangement so other processes need to be in place for when they do have remote directors as it's currently easy to make decisions when they are all sat in the same room.

#### Company secretary

The respondent is currently the nominated company secretary. They do not have someone doing this as a separate role and his company secretary duties are not separated out from his other duties so the removal would not result in any cost-savings.

#### Simpler law

A number of changes to the Articles of Association were made in June 2009 to 'tidy up a few things' (for example, introducing a share option scheme, putting in some lever controls to better control minority shareholders and more clearly defined drag along provisions if a shareholder decides to sell. The new model articles were also incorporated at the same time.

#### Directors' residential addresses

He is aware of this change and they have been considering this: '*We certainly ought to because of the nature of the work we do – pharmaceutical research – there are animal rights activists who get muddled up and think we test on animals*'. He felt that this would also be advantageous in countering fraud and that the survey interview would prompt him to make the change.

#### Trading disclosures / business names

The organisation has made no related changes to this but they only have two small offices and customers are buying solutions over the internet so it makes little difference to them.

## **5. General evaluation of Act**

### **5.1 Implementation timing**

The respondent was aware of the phased introduction of the measures and felt that this was appropriate.

## **5.2 Cost benefits**

Legal costs have not increased as a result of the Companies Act but the respondent did not identify any specific cost savings either.

## **5.3 Familiarisation/ Guidance**

He didn't attend any roadshows and was not aware of any in the area. He did review the Companies House website at the time and believes that it was useful.

He is not sure if it was just him who missed the roadshows but he believes that communications about the Act could have been better – *'getting to know about it you had to pull rather than it being pushed. If it hadn't have been for the lawyers then he might have missed some of this'*.

They do use legal advisors who have advised them on company law. This is a law firm based in the North East and they are advised by one of the partners directly.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

The respondent was generally positive about the codification of directors' duties:

*'I don't have a problem with this [demonstrating that they are meeting obligations]. It is good that it is not too structured as then it becomes box-ticking. The important thing is that you have to think about how you demonstrate that you are achieving these things and I think that this gets a better result'*.

*'It's what I thought a director was for before it came out but having it written down in that way is a positive I as it should make directors think about what they are for and what their responsibilities and duties are'*.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

In terms of the 'Think Small First' and making it easier to run a company objectives:



*'I like what they have done and it does work quite well for a company of 40 people. We are in a recognised phase of company - we have been through the start up and survived and this Act is not difficult for a small number of directors of a small company to understand and comply with'.*

**6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent felt that some of the irrelevant parts of having a limited company structure have gone but they were not a huge burden anyway – *'bringing it up-to-date is effectively what they have done and that is fine and it's worked for us'.*

**7. Overall synopsis**

Overall he believes that the impact of the Act has been positive but fairly limited:

*'Fairly minimal but I think that they did the right thing. I think more companies should be run like ours and I think that the Companies Act changes support that. The most obvious thing that has changed is codifying the behaviour of directors when they are taking decisions about the companies for which they are responsible which is useful to some directors who aren't very clear on'.*

**Case study 13**

**Company that has recently been established and has made use of some of the provisions in the Act**

**1. Background to company/ respondent**

The respondent is the company director, and sole shareholder. The company is a small private estate agent, incorporated to Companies House in 2006, having previously been a sole trader. There are 8 employees in total, and the company has an annual financial turnover of circa £420,000.

## **2. General awareness / implementation of the Act**

The respondent had limited awareness of the Companies Act 2006. However he thought that other small companies would similarly have limited awareness:

*'I can see how businesses find it hard to find out about this stuff, unless something happens and they get caught illegally doing something!'*

In terms of awareness channels for changes in Company Law he thought:

*'..the main thing to me about that is most small businesses engage, from my point of view would be the Chamber of Commerce, and if there are Town Centre Partnerships, and then obviously things like Business Link'.*

## **3. Awareness and adoption of / compliance with specific measures**

During the telephone survey that the respondent had previously participated in, he was found to be aware of changes to directors' duties, trading disclosures, and the register of shareholders/ annual return. Upon further questioning, he was found to have limited awareness of the intricacies of these changes, and had only made changes within the remit of trading disclosures (he had changed the text on outgoing emails).

The respondent was undecided about the removal of the requirement to have a company secretary, and when asked if he thought there to be a need for the role replied:

*'I don't know, I mean is it better to have one or not? Does it look better if you have one? So it's no big hassle. It's only a case if we were changing bank accounts or ... we're licensed agents, we're allowed to hold deposits, with new client accounts you have to get the company secretary to sign, that's a bit of a pain'.*

The respondent had not had to provide his home address under the Act and has benefitted by this change exclaiming that he would *'rather not have to'*.

The respondent was unsure as to whether the model articles drawn up was amended or altered in any way, as his accountant was responsible for setting these up. His perception was that if you said the word 'model articles', he would *'think it was something to do with corporate lawyers and not to do with company law'*.

## **4. Case study focus topic- setting up a new business**

#### **4.1 Source of awareness**

The respondent relied heavily on his accountancy firm to inform him of what needed to be done. In terms of changes regarding Company Law overall, he also received information from the Council and local Chamber of Commerce.

#### **4.2 Change detail: setting up a new company**

In terms of registering his company, the respondent had no contact with Companies House: *'the accountants did it all'*. In describing this process he mentioned *'they did all the paperwork, I just had to sign it'*. Whilst his accountant completed forms online, the respondent rarely accesses guidance provided by Companies House.

The respondent commented that his accountants were doing their accounts at the moment, and he was due to get the draft accounts shortly and then he would normally guarantee them, go through, and make any adjustments- after signing off they (accountants) submit it, because, in his words, *'I'm just too scared I'll make a mistake'*.

The annual return is also outsourced to accountants; the only thing they do themselves is the VAT.

#### **4.3 Costs incurred**

The respondent estimated that he had spent a 'few hundred pounds' on accountant fees during the process of registering his company.

### **5. General evaluation of Act**

#### **5.1 Familiarisation/ Guidance**

The company uses an accountancy firm. They also take bits and pieces of advice from their bank. The respondent revealed that he relies on support for issues of Company Law from his accountants. When asked whether their advisor approaches them regarding changes in the law, he replied:

*'The manager will come in when he wants to see us and then we decide if there is anything we are after, but that's about it'*.

## **6. Overall evaluation- policy objectives**

**6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

**6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

**6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent was unable to give an opinion on whether the Act had met its policy objectives due to his limited level of awareness of the changes incorporated and subsequent impacts.

## **7. Overall synopsis**

In the respondent's opinion cost was the main issue for small private companies complying with Company Law requirements, because of the use of third parties.

When asked how arduous the process of setting up a new business and complying with Company Law legislation, the respondent commented that the process was '*fairly easy... but that's because the accountants sort it out...*'.

### **Case Study 14**

## **Company that has experienced cost savings from ecomms**

### **1. Background to company/ respondent**

The company, which is a FTSE 100 company, has grown substantially over the past five years through organic growth and acquisition. They have 340 companies in their structure which are a range of limited and unlimited ventures in addition to the Plc and listed company. The listed company has around 28,000 shareholders currently. The respondent was the Deputy Company Secretary.

### **2. General awareness / implementation of the Act**

The respondent was very familiar with the Act and was involved in the consultation process prior to its implementation.

### **3. Awareness and adoption of / compliance with specific measures**

The organisation has made changes related to all measures which are relevant except trading disclosures.

### **4. Case study focus topic- savings from e-comms**

#### **4.1 Source of awareness of measure**

The respondent was aware through his involvement in the consultation process of the Act.

#### **4.2 Change detail**

In 2008 the organisation stopped sending out hard copies of the interim accounts and, instead, now issues a press release. They sent out a communication about this change with a copy of the last hard copy of the interim report that was issued to shareholders. Information about the change was added onto the end of the chairman's letter so as to avoid an expensive additional mailing.

An interesting trend identified is that the number of hard copies printed appears to be 'creeping up'. Initially 4,000 individual shareholders replied to the communication in the Chairman's letter and requested a hard copy. They are now sending out around 6,000 copies. The organisation is monitoring this change and the respondent commented that he felt that shareholders are not finding accessing the information on-line as easy as they anticipated and that institutional investors are requesting hard copies in spite of receiving an email communication as soon as the results are published:

*'If you look at the institutions then 100% ask for hard copies and the only people having it electronically are the private shareholders...any serious user of the annual report is asking for a hard copy'.*

It was also commented that the organisation has changed its approach to the design of its reports and that it previously designed hard copies of reports which were sent to the web. Now the process has changed so that it is more focused on the web design.

In addition to the cost-savings, some positive responses from shareholders have been recorded particularly in terms of the environmental impact:

*‘There has been a huge saving in trees [from reductions in printing] which seems to have gone down quite well with shareholders’.*

This was particularly the case where whole families have a shareholding and were previously receiving multiple copies of reports. The organisation used in the past to receive complaints about the waste. No other differences in stakeholder relationships have been identified. The organisation has been using electronic voting ‘from day one’ but he mentioned that he knows from colleagues in other companies that the Act has triggered this change.

#### **4.3 Cost savings/ overall evaluation of measure change**

The organisation still prints out some hard copies but the numbers are substantially lower than the 28,000 that it used to send out in the UK. They have not quantified the cost of sending out the interim reports alone but the overall saving, including the costs saved by not printing out the annual report, is around £50,000 per annum. It was noted that this saving is on-going rather than a one-off saving.

### **5. General evaluation of Act**

#### Model articles

The organisation recently asked legal advisors to conduct a review of the articles of the listed company and all the other UK companies recently. Changes to the Plc triggered the other changes and the internal decision was made to ensure that everything complies with the new Act and that there is internal consistency. This review has the advantage that this will result in just four sets of common articles – one for listed, one for the Plc, one for limited and one for unlimited companies in the group.

*‘We’ve taken the opportunity to bring these into line which will make life easier as we’ll just need to get to know a few sets of articles. It may also reduce future legal spend if do a reorganisation then the advisors will know what each of the articles says’.*

The legal spend on this was around £30,000. The point was made that it will save money in the long term; it will be a long time before they recoup this initial investment but the internal time saved is important. As a result of the expansion through acquisition, all the companies

have different articles so *'you never know what you are looking at until you look through all of the articles'* which has caused *'lots of head scratching'*.

#### Directors' addresses

They have always felt that it was borderline whether the organisation should try to apply for previous exemption for directors but felt this might be unacceptable as they are such a large entity. However, they elected to change to service addresses as soon as they could. This was a big exercise but they feel that it was worthwhile. The respondent was disappointed that this was not made retrospective.

They have noticed no impact on recruitment of directors but they haven't recruited in UK since the changes and he wouldn't be surprised if may have a positive impact in future.

They have not experienced problems with directors' addresses being on the record but had problems with shareholders' records prior to changes whereby a large number were affected by a 'boiler-room scam' whereby the fraudster obtained addresses from the register. He notes that the requirements for annual return have now changed and feels that this is appropriate as if shareholders buy shares in a listed company, they should not have to put this in the public domain.

#### Directors' duties

He feels that few changes have been internally made as a result of the measure. There were some communications to directors (two or three hard copy briefing papers) and one of the annual directors' training sessions was on the Companies Act 2006.

*'If a company is doing things properly there shouldn't have been a big change. One of the things that they have done differently is that the people who prepare board papers...if there are any changes that impact on the environment or employees then this is highlighted'*.

He feels that as a result of the Act, directors are probably more cautious and aware of their liability; this is not quite at a stage that it is stifling entrepreneurialism but this is marginal and it certainly is making them more risk adverse. The respondent also notes that the Act has had a greater impact on non-executive directors who are more aware of the impact actions may have on their personal reputation. They have a number who are professional non-executives who are reviewing things in more detail and asking for more information than in the past. However he feels that this change in behaviour could partially be attributable to the

global financial situation: *'it's hard to say whether this is a function of directors' duties or a function of the banking crises'*.

The board are very aware of the creditor protection provisions in the Act especially as they have made recent major acquisitions so the liquidity of the company is on the radar. There is a greater focus on liquidity as a result of the economic situation to make sure the company manages debt over a given period and can meet its liabilities over a reasonable return period.

The processes for conflict of interest changed completely for the listed company board and they took legal advice on this. They have a register for directors to register any changes in directorship or any other relationships that could impact on this which is reviewed formally once a year. The register is printed out and directors have to confirm that this is still correct. The subsidiary companies' process is not that formal but it is still considered at board meetings. They have also recently reviewed their code of conduct with the clarification on the duty not to accept benefits from third parties in mind.

The respondent is not aware of any derivative claims activity and is not overly concerned that this will be an issue for them as an organisation: *'I think if you look at wording then it is actually quite difficult for shareholders to make a claim'*. He felt that if shareholders do have grounds for a claim then this will be confirmed and already identified by other areas anyway.

#### Business review

The organisation has made changes to business review but the respondent finds it difficult to say how much this was driven by the Act and how much by business need and the fact that they have made major acquisitions so the way that they report changed anyway. All of the changes came at the same time so the Act is only one of the factors. He also finds it difficult to comment on how the impact of the Act is driving the views of the reporting of other people in the organisation.

However, they have changed how they report on risk:

*'one of the things that we did last year was looked at how we discussed risk in the business review and linked that through to how we reported managed and reported risk in the corporate governance element of the report so everything was much more tied together and tried to tell the story of the risks that we faced and how we mitigate them'*.



They are currently looking at tying in the reporting of corporate responsibility to the business review.

## **6. Overall evaluation- policy objectives**

### **6.1 Objective 1: Enhancing shareholder engagement and a long-term investment culture**

He feels that the Act has made little difference in this respect. They have around 28,000 shareholders but 90% of their shares held by the biggest 100 who are institutional investors. He feels that the Act has not impacted on how they behave and that the other 10% are probably private investors who are not aware of the Act.

### **6.2 Objective 2: To ensure better regulation and a 'Think Small First Approach'**

He is not convinced that the Act has simplified things for small businesses:

*'If you look at the sheer size of the Act I don't think it has made things more accessible to the small businessman and one of the things I find disappointing is how much of it has been brought into being by regulation – so small businesses can't just go to the Act, they need to go to the regulations too which is time-consuming'*

### **6.3 Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.**

The respondent is broadly positive about the impact on his own organisation, citing the cost savings resulting from the move to eCommunications and the trigger for them to standardise articles across the organisation.

He feels in the long-term the Act will make life easier but they are currently still getting to grips with it and it is still making life more difficult even down to completing the requisite historic data on the amount paid per share on annual returns.

## **7. Overall synopsis**

Whilst he was generally positive as outlined above, he was disappointed that the review did not go far enough, for example he would have liked to see more radical changes to regulations concerning the annual general meeting to allow all voting by proxy and more innovative feedback sessions with shareholders.

*'The starting point was how do we improve what we have got rather than if we had a blank sheet of paper what would we do'.*

## 2. Differences in awareness and compliance with / adoption of measures

### 2.1 Differences in awareness of measures (from Q9a)

**Directors' addresses: (85% awareness from all companies):** Higher awareness noted from medium private (80%), large private (83%), public (89%) and quoted (92%) companies rather than small private companies (63%); equally those companies with over 250 employees (87%) had significantly higher awareness than all others (91%). In terms of job titles, accountants (96%), and company secretaries (95%) had significantly higher awareness than owner/ family member (39%), chief executive/ managing director (58%), finance director (76%), company director (66%), and other roles (82%). Industry wise, companies within transport, storage and communication (94%), construction (92%), financial intermediation (89%), and manufacturing (87%) had significantly higher awareness than those within wholesale and retail trade (75%).

Of interest, significantly higher awareness of directors' addresses stemmed from companies who had made changes to the role of directors (97%), access to company information, including the reduction in filing times (99%), simpler law (98%) and enfranchising indirect investors (100%); lower awareness was found with those who had made changes to the business review (92%) and company secretaries (91%).

**Role of directors (79% awareness from all companies):** Significantly higher awareness was found from large private (78%), public (78%) and particularly quoted (90%) than small (48%) and medium (66%) private companies. Similarly, companies with over 250 employees held higher awareness than those with less than 10 (73%), between 10 and 49 employees (69%) and between 50 and 249 employees (73%). Company secretaries (88%), other job roles (75%) and finance directors (73%) furthermore had a higher awareness than owner/ family member (26%) and accountants (56%). To be assessed in greater detail in Section 7 on advice, guidance and third parties, significantly more companies with awareness of the role of director changes had sought guidance from networking groups (95%) and business seminars (92%) rather than other means (86%).

Significantly more companies who had made changes to access to company information, including filing times (97%), facilitating eCommunications (96%), enfranchising indirect investors (100%), and simpler law accessibility (95%) had significantly higher awareness than those who had made changes to the business review (90%), resolutions and meetings (90%), company secretaries (80%) and directors' addresses (88%).

**Trading disclosures (70% awareness from all companies):** Continuing the recurring trend, significantly higher awareness resonated from quoted companies (88%) over all others (49% small private, 56% medium private, 65% large private and 70% public). Higher awareness was also noted from those companies incorporated by Companies House 4-10 years ago (72%) rather than 1-3 years ago (59%). Company secretaries, in line with stakeholder thinking, again held the highest awareness of changes in this regard (83%), significantly higher than owner/ family member (31%), chief executive/ managing director

(69%), finance director (57%), company director (50%), accountant (69%) and other job roles (64%).

Highest awareness of changes to and restatement of the law relating to trading disclosures were furthermore noted from companies whose original source of awareness of Company Law was through BIS publications/ alerts (93%), BIS website (89%), and networking groups (87%), rather than those who cited Companies House publications (79%), press comments (78%), business seminars (79%), advisor (78%), own institute (80%) and other (79%).

Industry wise, companies within transport, storage and communication (88%) had higher awareness of changes to trading disclosures than those within manufacturing (71%), construction (70%), wholesale and retail trade (55%), and retail estate renting activities (67%).

**Register of shareholders/annual return (76% awareness from all companies):** Highest awareness once more was noted from quoted companies (88%); again significantly higher than small private (58%), medium private (70%) and large private (71%). Awareness was also significantly higher from companies with over 250 employees (82%) rather than those with less than 10 employees (62%), and those with 10-49 employees (67%), and 50-149 employees (74%). Consistently, company secretaries were most aware of changes to the register of shareholders (85%), compared with awareness levels noted from owner/ family member (34%), chief executive (69%), finance director (70%), company director (45%), accountant (62%) and other job roles (75%).

Awareness was furthermore highest from those companies who became aware of changes to Company Law through the BIS website (92%), networking groups (90%), and BIS publications/ alerts (89%) over those who had become aware through press comments (81%). Companies who had made changes to enfranchising indirect investors (100%), access to company information, including filing times (97%) and to the role of directors (92%) recorded higher awareness levels regarding the register of shareholders than those who had made changes to the business review (86%), and company secretaries (81%).

Highest awareness also stemmed from companies within transport, storage and communication (95%), construction (89%) and manufacturing (82%) opposed to those within wholesale and retail trade (62%) and real estate renting activities (72%).

**Business review (81% awareness from large private, public and quoted companies):** Unlike with other changes, company size did not bear an impact on awareness of the business review. Quoted companies (90%) were more likely but not significantly more likely to have an awareness of the business review than public (79%) or large private businesses (78%). Companies with 10-49 employees were however significantly less likely to have awareness (64%) than those with more than 250 employees (87%).

Other significant differences were both the Finance Director (87%) and the company secretary (89%) had a greater awareness than other roles (77%). The respondents' source of awareness stemmed from many sources, however a number of sources bore a greater

impact, the main significant difference was found among those who had used BIS publication alerts (96%) experienced a greater awareness than those who used Company House Publications (88%) or a source which had not been listed (81%).

The highest awareness was evident in those within manufacturing (89%); this was significantly higher than wholesale and retail trade (73%) and Real Estate Renting Business activities (77%).

**Facilitating electronic communications (69% awareness from large private, public and quoted companies):** Quoted companies (86%) were significantly more likely to have an awareness of facilitating electronic communications than large (62%) or public (65%) companies; this follows subsequent trends. Unsurprisingly awareness was also higher for companies with 250+ employees (74%) than companies with 10-49 (61%) and 50-149 employees (62%). As before, companies secretaries (83%) experienced a high level of awareness and were significantly more likely to have a greater awareness than the Finance Director (48%) or those whose job title was not specified (other) (67%).

Those who had been part of a networking group (87%) had higher awareness on average compared to those who sought the advice from an advisor (78%). Those who had an awareness of facilitating electronic communications also had a high awareness of a number of company measures; the top three cited included enfranchising indirect investors (100%), access to company information, including filing times (90%) and the role of directors (88%). Wholesale and retail trade (53%) were less likely to have awareness than companies within manufacturing (72%), construction (75%), and Financial Intermediation (79%).

**Access to Company information, including filing times (84% awareness from public and quoted companies):** There were no significance differences between company size, with 81% from public companies and 86% from quoted companies having awareness, however following previous trends those with 250+ employees (91%) had a higher awareness than companies with less than 10 (77%) and 10-49 employees (72%).

Company secretaries (93%) had the greatest awareness of Access to Company Information, their awareness was significantly higher than Finance Directors (77%) or those who job title was not listed (81%). Businesses that had an awareness of access to company information including filing times were also equally as likely to be aware of facilitating electronic communication and enfranchising indirect investors (both 100%).

**Enfranchising indirect investors (63% awareness from public and quoted companies):** Greater awareness stemmed from those in quoted companies (73%) than those in public companies (37%), interestingly in quoted companies the respondent was more likely to be the company secretary than in any other company size (59% vs. 31%). Additionally those with 250+ employees (81%) were more likely than who had less than 250 employers (45%) to have awareness of this particular change.

Company secretaries (79%), those who had used the BIS website (88%) and the Financial Intermediation sector (76%) expressed the highest levels of awareness of enfranchising indirect investors (Please note figures are only reported where base sizes exceed 30).

**Simpler Law/ accessibility including model articles and CH guidance (62% awareness from small, medium, and large private and public companies):** Those in public (61%) and large private (67%) companies had significantly higher levels of awareness than those in small (29%) or medium (47%) private companies. However, those in small private companies (29%) were the least likely to have an awareness and this was significantly less likely than those in medium private (47%), large private (67%) and public companies (61%). Those with 250+ (69%) employees had a higher awareness than those with 50-249 employees (58%).

Finance Directors (61%), Accountants (53%), other (57%) and company secretaries (80%) were more likely than Owners (17%), Chief executives (25%) and Company director (13%) to have awareness. Following the previous trend company secretaries (80%) were more likely to have knowledge of this act than any other member of staff.

A number of different sources appeared to have a positive impact on awareness these include the BIS publications or alerts (91%), BIS website (88%), Company House Roadshow (88%), Networking groups (86%), and Business seminars (85%). Transport Storage and Communication (78%) had a higher awareness than both Manufacturing (57%) and Wholesale and Retail trade (41%).

**Resolutions and Meetings (77% awareness from small, medium and large private companies):** Higher awareness was evident in large private companies (81%), this was significantly higher than in medium (66%) and small private companies (47%), those with 250+ employees (83%) had a higher awareness than those with 10-49 (65%) or 50-250 (70%) employees.

Company secretaries had a high awareness of Resolutions and Meetings (94%), and awareness was highest where companies had consulted BIS publications or alerts and Networking groups (both 96%). They also had a high awareness of broad capital maintenance measures (100%), simpler law (98%) and facilitating electronic communications (97%). Transport Storage and communication (95%) experienced the highest levels of awareness of this measure.

**Company secretaries (81% awareness from Small, Medium and Large private companies):** Those from both large (85%) and medium (72%) private companies were more likely to have an awareness of this measure than those from small (51%). As with previous trends the number of employees had an impact on awareness, those with 250+ employees (87%) were more likely to be aware than those with less than 10 (78%) and 10-49 (72%) employees.

Both the Company secretary and Finance Director experienced the highest level of awareness. The company secretary (94%) exhibited a higher level of awareness than any

other employee (average:81%) and the Finance Directors (87%) was more likely to be aware than the owner (36%), chief executive (50%), company director (49%), accountant (47%), and those who job title did not fall into the pre set categories (76%).

Those with the highest awareness of this measure used the following sources, networking groups (98%) and Business seminar (97%) and they were significantly more likely to use these than Company House Publications (92%), Advisors (92%) and other (90%).

Awareness levels of other changes were furthermore highest for companies who had made changes to simpler law/ accessibility (99%), facilitating eCommunications (97%), and capital maintenance (96%).

Manufacturing (83%) and Transport, storage and communication (91%) were more likely to have awareness than those in Wholesale and Retail Trade (73%).

**Capital Maintenance (57% awareness of large private companies):** 57% of those in large private companies had an awareness of Capital Maintenance. Awareness was dependant on the number of employees, those with 250+ (62%) and those with less than 10 employees (68%) had a greater awareness than those with 10-149 employees (49%).

Once again the company secretary (73%) had the greatest awareness of this particular measure; this was significantly higher than both the Finance Director (44%) and other (54%). Networking groups proved to be an effective source with 84% of those having an awareness of Capital Maintenance. Those who had used this source had a significantly higher level of awareness than those who had used Press comments (68%), Advisors (70%) and other (66%).

Real estate renting business activities (60%) showed a greater awareness than wholesale and retail trade (36%).

**Auditor limited liability agreements (66% awareness from medium and large private companies, public and quoted companies):** Significantly more public companies were aware of auditor limited liability agreements (86%) than medium private (47%), large private (59%) and public (63%) companies. Companies with greater than 250 employees (74%) and fewer than 10 employees (70%) also had significantly higher awareness than companies with 10-49 (54%) and 50-249 (51%) employees. Consistently, the Company Secretary had the highest awareness (83%), significantly higher than the Finance Director (49%), accountant (36%) and other (61%).

Predominate sources of awareness were found to be BIS publications or alerts (87%), the BIS website (85%), and networking groups (87%). Awareness of this change was furthermore highest amongst those who had made a change to enfranchising indirect investors (99%), and companies in the financial intermediation sector (81%).

## 2.2 Differences in company profiles adapting to/ complying with measures (from Q9b)

What follows is an assessment of significant differences in the profiling of companies who had made changes to each of the key measures:

### **Directors' addresses (52% taken steps to make a change from all companies):**

Significantly more public companies (60%) had made changes compared with small (24%) and medium (44%) private companies. Company secretaries were most likely to agree that changes had been made (62%), opposed to chief executives/ managing director (21%), finance directors (38%), and company directors (43%). In terms of source of awareness of the Companies Act 2006, those who had consulted the BIS website (70%), BIS publications or alerts (73%) or through networking groups (71%) exhibited the highest uptake levels (more so than those who had become aware through press comments or an advisor, 59%). Highest levels of uptake were also found from those companies who had also made changes to simpler law/ accessibility (80%), and from companies within the transport, storage and communication sector (82%), significantly higher than those in manufacturing (45%), construction (62%), wholesale and retail trade (40%) and real estate renting activities (45%).

**Access to company information including filing times (73% taken steps to make a change from public and quoted companies):** Significantly more quoted companies (80%) had made changes compared to public companies (55%). Of those who had made changes, more companies cited BIS publications or alerts (89%) as the initial source of their awareness of the Companies Act 2006 than those who reviewed press comments (80%) or consulted advisors (81%), however this finding was not significant. Highest levels of adoption were also found from those companies who had also made changes to enfranchising indirect investors (96%). Finally, companies within financial intermediation were most likely to have made this change (85%).

### **Business review (64% compliance from large private, public and quoted companies):**

Changes were recorded from a greater number of quoted companies (84%) than large private (56%) and public (56%) companies. A higher level of compliance resonated from companies whose initial source of awareness of the Companies Act 2006 was from BIS publications or alerts (80%) and from their own institute (78%) rather than those who had used other means (63%). Highest levels of compliance with the business review also emanated from companies who had also made changes to enfranchising indirect investors (99%). The highest incidence of changes were additionally found from companies within the manufacturing sector (74%), significantly higher than wholesale and retail trade (58%) and real estate renting activities (58%).

### **Company secretaries (12% taken steps to make a change from small, medium and large private companies):**

No significant differences were unearthed between size of company and level of uptake, yet when assessing number of employees, a greater proportion of companies with 10-49 (23%) had made changes compared to just 10% of companies with less than 10 employees and 10% with more than 250 employees. The BIS



website (23%) and Companies House Roadshow (26%) appeared to bring about a greater incidence of adoption, compared to eleven per cent who had read a press comments, twelve per cent who attended a business seminar or used an advisor and five per cent who used other sources of guidance. Highest levels of uptake were also found with companies who had also made changes to facilitating electronic communications (25%), and capital maintenance (22%). Industry wise, more changes were detected from companies in real estate renting activities (17%), opposed to construction (3%) and wholesale and retail trade (4%).

**Role of directors (50% taken steps to make a change from all companies):** Significantly more quoted companies had made changes in this regard (71%) than small private (13%), medium private (27%), large private (46%) and public companies (48%). Correspondingly, companies with over 250 employees were most likely to have made a change (65%). Of those interviewed significantly more company secretaries reported this change (66%) compared with the owner (9%), chief exec /managing directors (16%), finance directors (32%), company directors (12%), accountants (10%), and other job titles (52%). Highest adaptation levels also stemmed from companies who had consulted the BIS website (77%) or BIS publications and alerts (73%) and networking groups (74%). Additionally, highest levels of those making a change were found with companies who had also made changes to enfranchising indirect investors (89%), and those within financial intermediation (67%; significantly higher than those within manufacturing (49%), construction (48%), wholesale and retail trade (36%) and transport, storage and communication (49%) and real estate renting business activities (48%)).

**Register of shareholders/annual return (52% taken steps to make a change from all companies):** Once more significantly more public (58%) and quoted (73%) companies had made changes compared with small (22%), medium (38%) and large (45%) private companies; company secretaries were also in most abundance in citing such changes (66% of whom noted changes to the register of shareholders). Highest levels of those making a change also stemmed from companies who had cited BIS publications or alerts as their source of awareness of the Companies Act 2006 (79%) and networking groups (77%). Furthermore highest levels of adoption were also found with companies who had also made changes to enfranchising indirect investors (83%), access to company information, including filing times (79%), and facilitating eCommunications (80%), and from companies within construction (67%), transport, storage and communication (66%) and financial intermediation (63%; significantly more so than companies in wholesale and retail trade, 39% and real estate renting business activities (48%)).

**Resolutions and meetings (43% taken steps to make a change from small, medium and large private companies):** Significantly more large private (47%) companies had made changes than small (17%) and medium (28%) private companies. Furthermore highest levels of uptake were found with companies who had also made changes to simpler law/ accessibility, and capital maintenance (both 81%). Highest incidence of changes made was also found with companies within real estate renting business activities (52%) than those in manufacturing (31%), construction (27%) and wholesale and retail trade (32%).

**Trading disclosures (50% taken steps to make a change from all companies):** Almost four fifths (78%) of quoted companies had made changes in this regard opposed to almost half of public companies (47%), just over two fifths of large private companies (42%), and a third of medium private companies (31%); significantly fewer small private companies had made a change (18%). In line with this, companies with over 250 employees were most likely to have made a change to trading disclosures (62%), opposed to those with 1-9 employees (32%), 10-49 employees (41%), and 50-149 employees (38%). Company secretaries were again most likely to cite this change (64%) and those who had consulted BIS publications or alerts exhibited the highest levels of change (75%). Highest levels of uptake were also found with companies who had also made changes to enfranchising indirect investors (85%) and access to company information, including filing times (82%). Finally, companies in transport, storage and communication were most likely to have made a change to trading disclosures (68%), versus those in construction (43%), wholesale and retail trade (38%), and real estate renting business activities (49%).

**Facilitating electronic communications (38% taken steps to make a change from large private, public and quoted companies):** Significantly more quoted companies (67%) had made a change than large private (26%) and public companies (28%), and in line with this a greater proportion of companies with over 250 employees had made a change (46%) than those with fewer employees (31%). Highest uptake was found amongst companies who had used the BIS website as a source of awareness (61%), BIS publications and alerts (57%) and networking groups (56%), and amongst were companies who had also made changes to enfranchising indirect investors (85%). Industry wise, those in real estate renting business activities (40%) were more likely to have made a change to eCommunications than those in wholesale and retail trade (25%).

**Auditor limited liability agreements (17% taken steps to make a change from medium and large private, public and quoted companies):** Significantly more public companies had entered an agreement (21%) than medium (13%) private companies. Company secretaries in this instance were most likely to report such a change (23%), compared with finance directors (13%), accountants (7%) and other job roles (13%). BIS publications or alerts (25%) appeared to bring about the greatest incidence in those making this change, significantly more so than those who had read a press comment (16%). Highest uptake of auditor limited liability agreements transpired from companies in transport, storage and communication (29%), compared with just eight per cent in wholesale and retail trade and fifteen per cent in real estate renting business activities.

**Enfranchising indirect investors (45% taken steps to make a change from public and quoted companies):** Significantly more quoted companies had made this change (57%) versus public companies (12%). Uptake was furthermore highest amongst companies who had been involved with networking groups (67%), or business seminars (66%) than those who had consulted Companies House publications (49%) and Press comments (50%). Those who had also made a change to facilitating electronic communication were most likely to have also made a change in this regard (67%), and significantly more companies in

manufacturing (56%) had furthermore made a change compared with those in real estate renting business activities (34%) and financial intermediation (22%).

**Capital maintenance (11% taken steps to make a change from large private companies):** A greater proportion of companies who had made a change to measures included with the capital maintenance measure had also made a change to simpler law/accessibility (25%), and significantly more companies within real estate renting business activities (20%) had made this change compared with those in manufacturing (7%), wholesale and retail trade (3%).

**Simpler law/accessibility including model articles and CH guidance (26% taken steps to make a change from small, medium, and large private, and public companies):** A greater proportion of large (29%) and public (28%) companies had made a change within this realm than small (9%) and medium (13%) private companies. In keeping with the consistent findings, those whose original source of awareness of the Companies Act 2006 was through BIS publications or alerts (55%), the BIS website (52%), and networking groups (46%), rather than Companies House publications (36%), press comments (32%) and advisors (36%). A strong parallel was furthermore discovered between those who had made a change to role of directors, facilitating electronic communications and resolutions and meetings (49% of whom made a change to simpler law), and enfranchising indirect investors (64% of whom also made a change to simpler law).

### 2.3 Awareness of measures - differences by company size

	Total	Small	Medium	Large	Public	Quoted
Role of directors	79%	48%	66%	78%	78%	90%
Business Review	81%			78%	79%	90%
Access to Company Information	84%				81%	86%
Facilitating electronic communications	69%			62%	65%	86%
Enfranchising indirect investors	63%				37%	73%
Simpler law /accessibility including model articles and CH guidance	62%	29%	47%	67%	61%	
Resolutions and meetings	77%	47%	66%	81%		
Company secretaries	81%	51%	72%	85%		
Capital maintenance	57%			57%		
Directors' addresses	85%	63%	80%	83%	89%	92%
Trading disclosures	70%	49%	56%	65%	70%	88%
Register of shareholders /annual return	76%	58%	70%	71%	84%	88%
Auditor limited liability agreements	66%		47%	59%	63%	86%
None of the above	3%	16%	6%	3%	3%	2%

Source: Q9a. Firstly, are you aware of any of the following changes regarding Company Law, even if you haven't taken any direct action? Base: Simpler law/accessibility including model articles and CH guidance (952); Capital maintenance (235); Enfranchising indirect investors Enfranchising indirect investors (276); Auditor limited liability agreements (743); Facilitating electronic communications (511); Trading disclosures (1001); Resolutions and meetings (725); Register of shareholders/annual return (1001); Role of directors (1001); Company secretaries (725); Business review (511); Access to Company Information including reduction in filing times (276); Directors' addresses (1001); None (1001).

## 2.4 Source of awareness split by company size for those who had not made a change

	Total	Small	Medium	Large	Public	Quoted
Haven't heard	7%	3%	0%	0%	0%	100%
Other - Specify	61%	46%	75%	68%	59%	0%
Don't know	13%	3%	0%	18%	12%	0%
Employee or manager of this business	1%	3%	0%	0%	12%	0%
Employee or manager of another business	0%	3%	0%	0%	0%	0%
Solicitor	3%	3%	17%	0%	6%	0%
Accountant	19%	30%	14%	23%	6%	0%
Businesslink	0%	0%	3%	0%	0%	0%
Companies House	14%	19%	17%	14%	18%	0%
IOD	3%	0%	0%	5%	0%	0%
Trade association	1%	3%	6%	0%	0%	0%
This survey	0%	3%	0%	0%	0%	0%

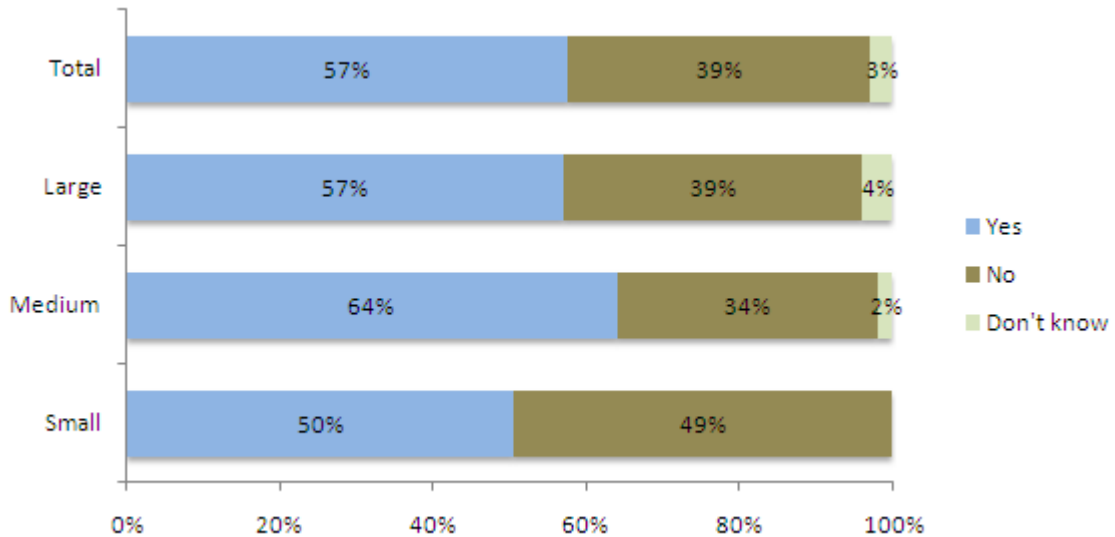
Source: Q104. How did you hear about these changes? Base: 113 (small 37, medium 36, large 22, public 17, quoted 1)

## 2.5 Split of companies purchasing external professional services, by company size

	Total	Small	Medium	Large	Public	Quoted
External professional services	37%	21%	28%	29%	38%	53%
External training courses	6%	3%	4%	7%	6%	6%
Software	6%	1%	4%	4%	6%	11%
Prepared guidance materials / manuals / proformas	5%	3%	3%	6%	3%	4%
Other - specify	5%	7%	6%	5%	6%	6%
Printing i.e. changes to stationery, signage	1%	5%	1%	1%	2%	2%
Don't know	2%	1%	5%	3%	2%	0%
None	48%	66%	57%	53%	48%	34%

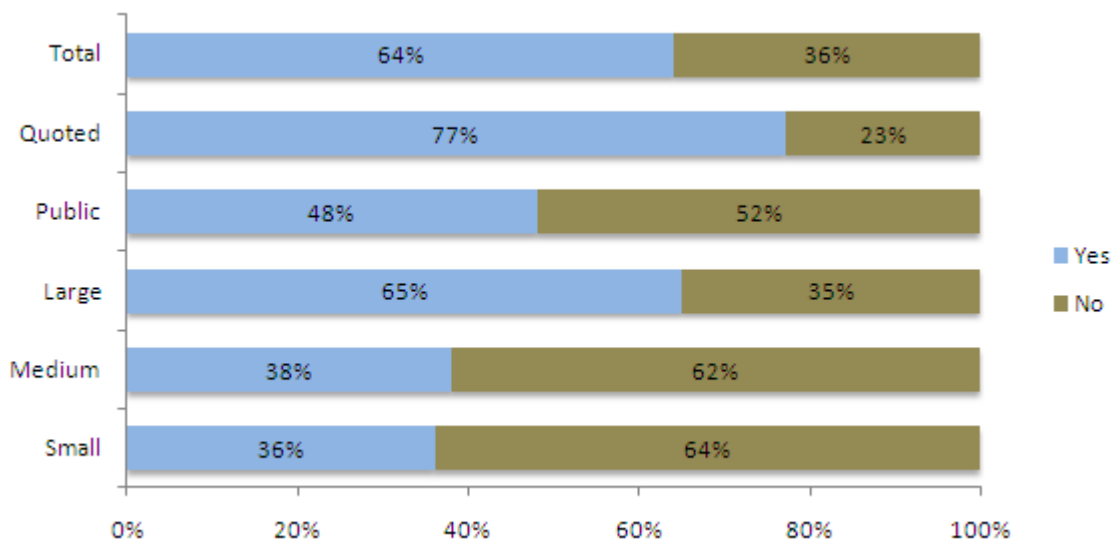
Source: Q15. Did your organisation purchase any goods OR services from external suppliers in order to prepare and/or take any necessary steps in the light of the changes? Base: 717, all company sizes, weighted by economic impact.

**2.6 Companies who had not made a change: do they hold AGMs? (by company size)**



Source: Q118. Do you hold AGMs? Base: 504; small (215), medium (165) and large (124) companies; overall weighted by economic impact.

**2.7 Awareness that companies can apply to the court to prevent access to the register if wanted for dubious reasons - split by company size**



Source: Q84 Are you aware that you can apply to the court to prevent access to the register if you think it is wanted for dubious reasons? Base: 218; small (44), medium (61), large (46), public (54), quoted (13); overall weighted by economic impact.

## 2.8 Source of advice/ guidance used

	Total	Small	Medium	Large	Public	Quoted
Solicitor	68%	30%	62%	66%	64%	82%
Accountant	39%	74%	53%	38%	38%	32%
Companies House	8%	7%	6%	8%	15%	5%
Internet	5%	5%	4%	5%	3%	7%
ICSA	5%	0%	3%	3%	4%	9%
Other - Specify	46%	32%	35%	48%	46%	48%

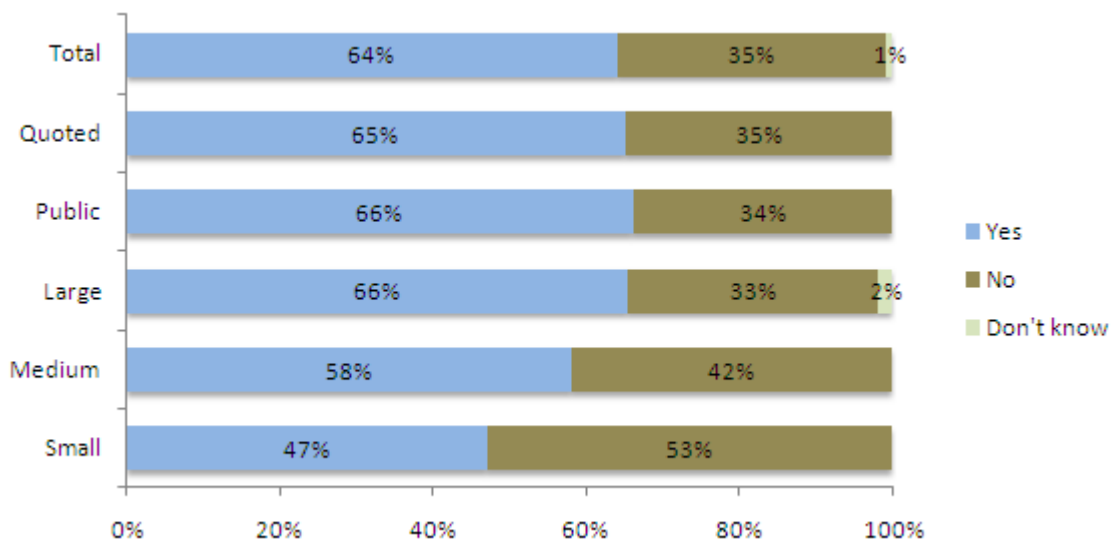
Source: Q135. Which sources do you use? Please include both professional (e.g. legal, government departments) and non-professional (e.g. friends and colleagues) sources. Base: 795 (small 188, medium 186, large 191, public 186, quoted 44).

## 2.9 Assistance from accountants and solicitors

	Total	Small	Medium	Large	Public	Quoted
Deal with HMRC	42%	66%	52%	42%	43%	36%
Draw up accounts	37%	88%	49%	34%	42%	31%
File documents with Companies House	29%	77%	48%	30%	32%	14%
None	16%	3%	9%	18%	13%	17%
Submit the annual return	17%	75%	32%	16%	20%	6%
Organise shareholder meetings	17%	45%	16%	11%	17%	22%
Other	34%	16%	31%	29%	33%	47%

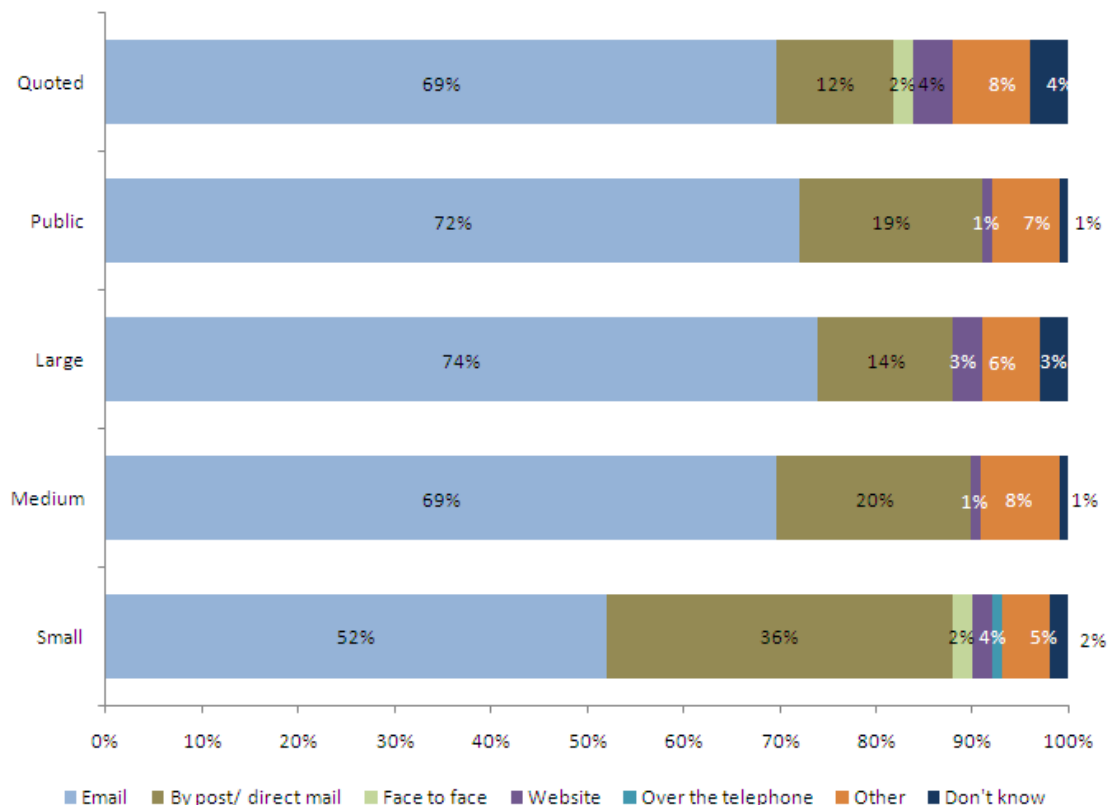
Source: Q137. What tasks does your accountant/ solicitor help you with? Base: 626 (small 157, medium 153, large 143, public 137, quoted 36)

**2.10 Usage of Companies House website as a source of information on company law, by company size**



Q142. Do you use the Companies House website as a source of information on company law? Base: 1001; all company sizes, weighted by economic impact.

## 2.11 Channel preference to receive news of changes to Company Law split by company size



Source: Q141. Through which channel of communication would you prefer to receive news of Company Law changes that may affect you? Base: 1001; small (248), medium (232) large (235), public (227), quoted (49), weighted by economic impact.

### 3. Cluster analysis

Different companies had varying perceptions both of their experience and impact of the changes introduced through the Companies Act 2006. In order to understand more fully the key emerging themes or attitudes of companies, a statistical technique known as cluster analysis (also known as segmentation) was used to group the companies according to their attitudes relating to the Companies Act 2006.

#### 3.1 Cluster analysis technique

Cluster analysis was used on unweighted data to identify groups of companies who responded in a similar way. Once groups were identified, it was possible to 'profile', both attitudinally and demographically, companies in terms of their perceptions. These profiles, in turn, enable a better understanding of the key attitudes towards Company Law and how to address them.



### 3.2 Cluster analysis of companies

From the questionnaire, several questions were identified as potentially shaping the segmentation. After examination three questions were deemed as most appropriate in forming the basis of the segmentation<sup>1</sup>. These included:

- *Q133 In so far as you are aware of the Companies Act 2006, would you agree that Company law has been simplified (on a scale of 1-5 where 1 is do not agree at all and 5 is completely agree)?*
- *Q132 Overall, how well would you say that you understand the issues concerning the Companies Act 2006 as they apply to your company?*

Completely	1
Quite well, but not completely	2
Not very well	3
Not at all well	4

- *Q11A On a scale of 1-5 where 1 means very easy and 5 means very difficult, how easy were the changes in the law to understand?*

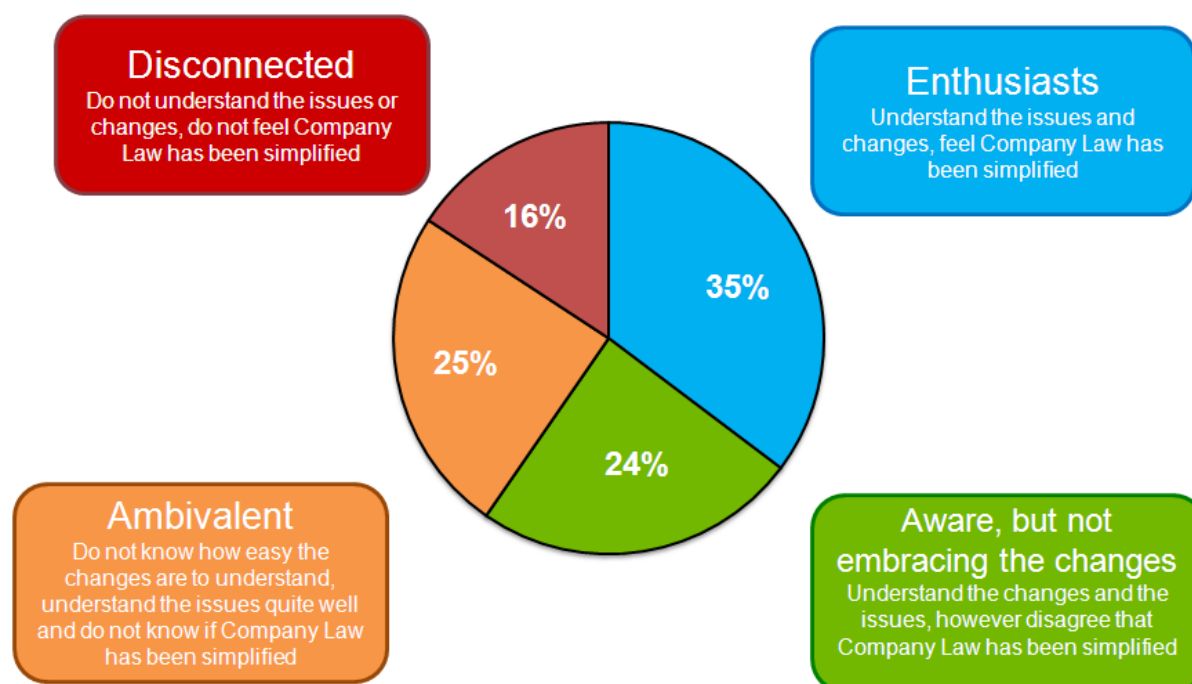
The cluster analysis was based on all 1,001 responses to the quantitative study, and based on responses to the three questions above the optimal solution produced four distinct clusters (Figure 10.1). As can be observed, 35% (the largest cluster) were generally positive and understood the changes; 25% were ambivalent with no strong views- they did not know how easy the changes in the law were to understand nor whether company law had been simplified; 24% were aware of changes but not embracing them, and finally 16% were generally negative about changes to Company Law.

This reflects, despite the largest cluster being positive overall and embracing change (enthusiasts), a negative split of those who do not feel that company law has been simplified.

---

<sup>1</sup> the questionnaire was heavily filtered and scaled questions provide opportunity for greater depth of insight.

**Figure 3.1 Overall cluster profile of all companies interviewed during the quantitative study**



### 3.3 Profile of the clusters

By segmenting the population of companies interviewed using cluster analysis, profiles were able to be built for each cluster by analysing responses to the remaining attitudinal questions in the survey and their demographic profile. This information can assist in the action planning process through a greater understanding of company experiences and identification of the skews of cluster profiles.

It is important to note that the demographic profiles identified by the statistical analysis highlight a skew to the respective groupings (compared with the other clusters) rather than definitive statements of the level of satisfaction of specific groups.

Where demographic or attitudinal skews were not identified, this is because all groups exhibited these characteristics, or base sizes were not robust enough to report a skew.

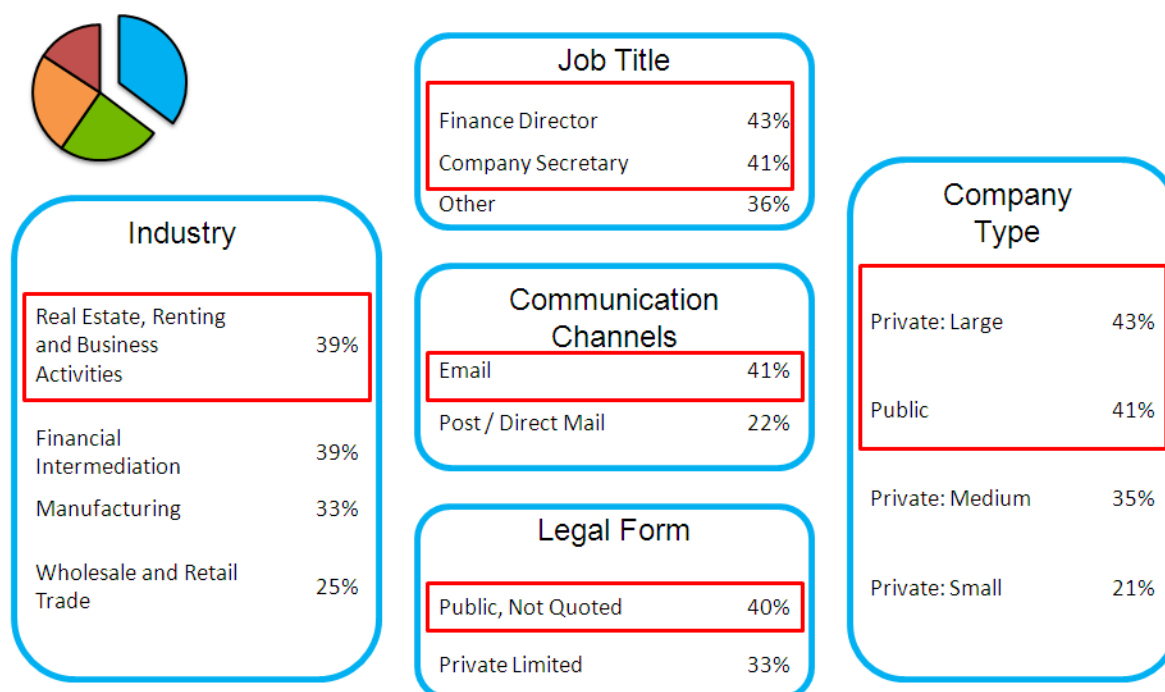
#### 3.3.1 Enthusiasts (35%)

In terms of demographic profiling (shown in Figure 10.2), enthusiasts had highest representation from large private or public companies and tended to lie within the Standard

Industrial Codes (SIC) of real estate, rental and business activities, and manufacturing. There was a skew evident in those interviewed being finance directors and company secretaries, and not directors of a company. Additionally, their preferred communication method for future correspondence of matters relating to Company Law was that of email.

Regarding attitudinal profiling, companies interviewed generally were aware of changes to Company Law and used advisors or information from other sources. They tended to agree that the aim of reducing the regulatory burden of Company Law has been met, and used and found guidance provided from Companies House and their website helpful. Furthermore, they had a higher incidence of still holding AGMs.

**Figure 3.2 Key demographic characteristics of enthusiasts**

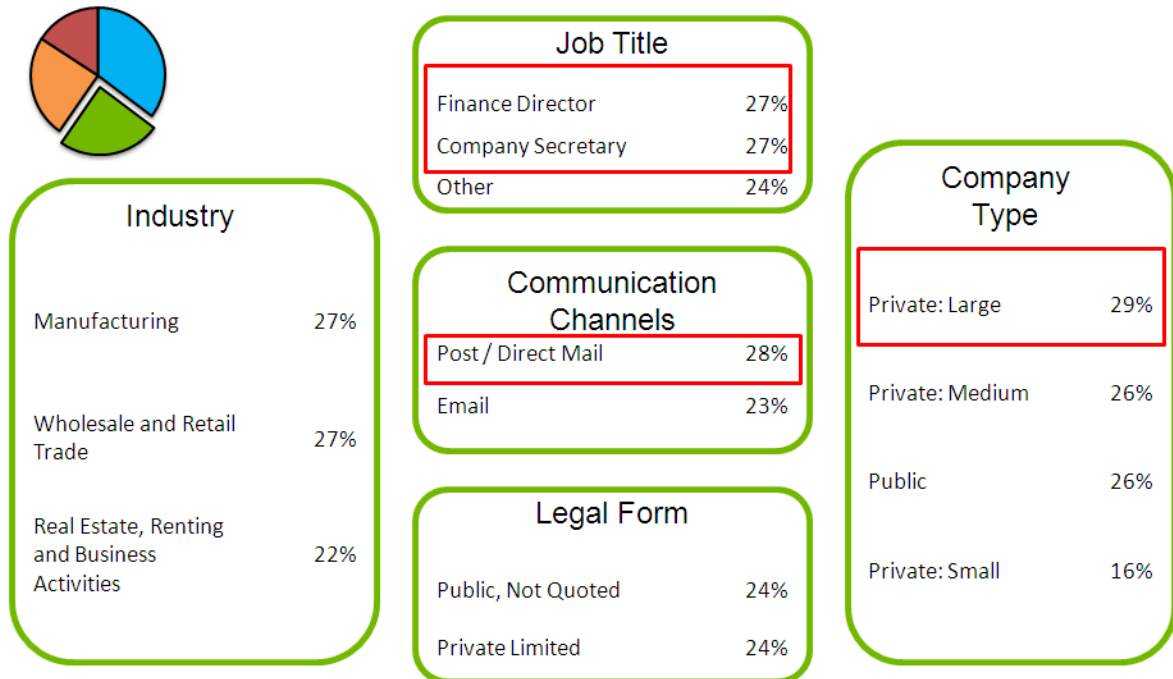


### 3.3.2 Aware but not embracing the changes (24%)

In terms of demographic characteristics (Figure 10.3), those aware but not embracing changes were generally found to be large private companies, and a skew towards those interviewed being finance directors and company secretaries was also noted in this cluster. Their preferred communication method for future correspondence of matters relating to Company Law was however that of post / direct mail.

Demographic profiling revealed that this cluster were aware of the changes in Company Law, but did not agree at all that the aim of reducing the regulatory burden of Company Law has been met. They also tended to still hold AGMs and were neutral about the helpfulness of Companies House and the helpfulness of their website.

**Figure 3.3 Key demographic characteristics of those aware but not embracing the changes**

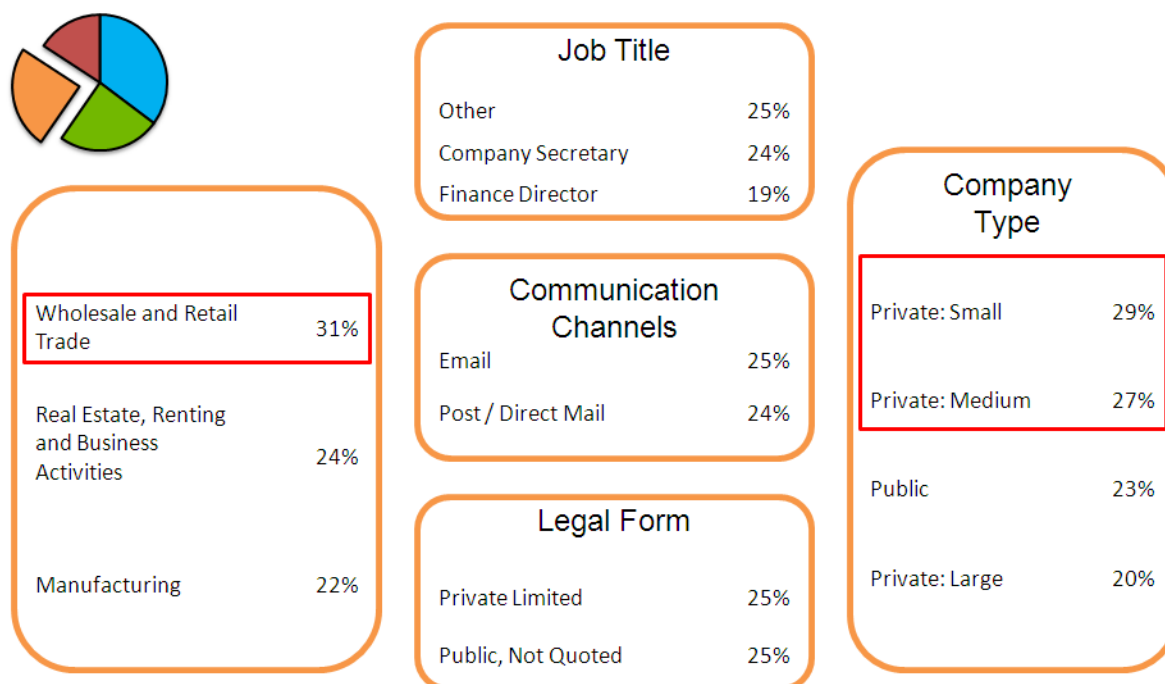


### 3.3.3 Ambivalent (25%)

Demographic skews, as illustrated in Figure 10.4, revealed that those who were ambivalent tended to be small or medium private companies within the wholesale and retail trade industry.

Attitudinal profiling highlighted that these companies generally were not aware of the changes in Company Law, did not use advisors or information from other sources, and did not hold AGMs.

**Figure 3.4 Key demographic characteristics of the ambivalent cluster**

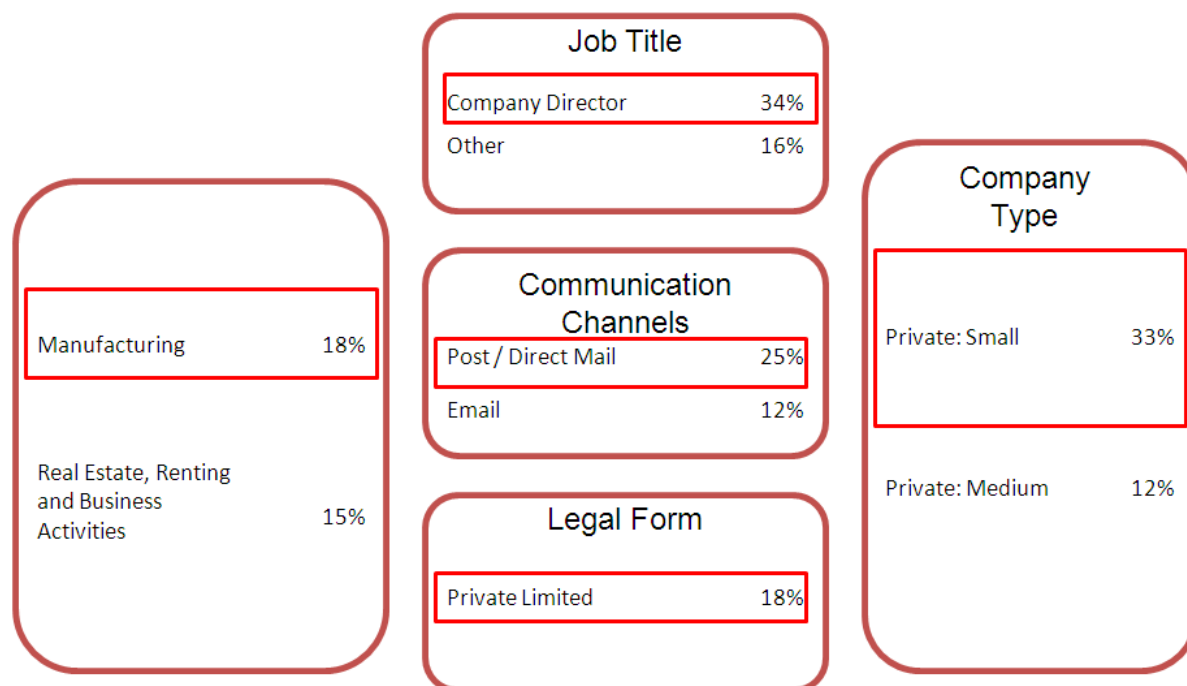


### 3.3.4 Disconnected (16%)

The disconnected cluster, demographically, tended to have a skew towards small private companies, particularly within the manufacturing industry (Figure 10.5). Respondents interviewed were also generally company directors, and their preferred communication method for future correspondence of matters relating to Company Law was that of post / direct mail.

Attitudinal profiling highlighted a skew towards this cluster not being aware of the changes in Company Law, nor using advisors or information from other sources. Furthermore they generally did not hold AGMs and did not know how effective the guidance provided by Companies House was.

**Figure 3.5 Key demographic characteristics of the disconnected cluster**



Distinct mixed perceptions were, therefore, evident across all four clusters. Of interest is that the only cluster where a positive skew towards the use of advisors was that of the enthusiastic, who have embraced the changes and agreed that Company Law had been simplified. This again reinforces the influential role advisors appear to play in informing and bringing about change to measures introduced in the Companies Act 2006, as those still ambivalent and disconnected tended not to use advisors.

Two focal clusters are those aware but not embracing changes, and those disconnected. Given the people deemed most appropriate to answer the survey within the cluster that is aware but not embracing changes were finance directors and company secretaries of large private companies, targeted communications would be advised to be directed to them to increase awareness of the opportunities associated through changes introduced in the Companies Act 2006, particularly via direct mail/ post. In terms of the disconnected cluster, it is small companies that as suggested through the advice and guidance section (section 7), generally do not have exposure to the guidance provided by Companies House, despite a skew being evident of not using advisors. Greater outreach of guidance and communications regarding Company Law would be advised via direct mail/ post, and too through other channels referenced in section 7, such as local business forums.

## 4 Research Instruments

### 4.1 CATI questionnaire

#### Evaluation of Companies Act 2006

**IF SWITCHBOARD OR SECRETARY:** Good morning/good afternoon, may I speak with the company director or chief operating officer within **[company name]** who has responsibility for corporate governance or matters relating to company procedures and policies?

**IF ASKED WHY:** I'm calling from ORC International, regarding research we are conducting on behalf of the Government's Department for Business, Innovation and Skills (or BIS as it's commonly known).

BIS are looking to evaluate recent changes to Company Law in order to assess its impact on businesses.

I need to speak to the company director or the person responsible for how the company operates (he/she who implements business procedures such as submitting annual returns).

**IF REFERRAL:** May I please have the name and contact number for the person with whom I should speak?

**WHEN THROUGH TO THE RIGHT PERSON:**

Good morning / afternoon. My name is ..... and I am working for an independent market research company called ORC International. Can I confirm that you take responsibility for how the company operates (such as submitting annual returns)?

**ASK ALL:**

We are conducting a survey on behalf of the Department of Business, Innovation and Skills. (or BIS as it's commonly known), which was formed from the merger of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry) and the Department for Innovation, Universities and Skills.

The survey aims to assess general business operating procedures and evaluate the effects of recent changes in Company Law. All of your comments are confidential and your details will not be shared with any third parties. This research is not about whether you are law abiding, it's more about whether you are aware of any recent legislative changes, and to gather your views on how you operate your business.

BIS are looking to evaluate recent changes to Company Law in order assess its impact on businesses.

The survey will last 15-20 minutes. Are you willing to take part in the survey?

**IF WILLING TO PARTICIPATE IN INTERVIEW: CONTINUE WITH MAIN SURVEY**

AA

Q7. Firstly, what is your job title/position?

DO NOT READ OUT. SINGLE CODE.

OWNER/FAMILY MEMBER	1
CHIEF EXECUTIVE/ MANAGING DIRECTOR	2
THE CHAIRMAN	3
FINANCE DIRECTOR	4
IN-HOUSE LEGAL ADVISER	5



COMPANY DIRECTOR	6
ACCOUNTANT	7
COMPANY SECRETARY	8
OTHER (INCLUDE DON'T KNOW) – SPECIFY	9

IF Q7=1,2,3,4,5,7,8,9

Small, medium, large private, and public companies

Q7a And just to check, are you a director of the company?

Quoted companies only

Q7b. And just to check, are you a non-executive director of the company?

	7a	7b
Yes	1	1
No	2	2
Don't know	3	3

AA

Q8. And are you aware of any recent changes regarding Company Law (in particular the Companies Act 2006)?

Yes	1
No	2
Don't know	3

IF Q8=1

Q8a. And how did you become aware of any changes? Was it through...

READ OUT.MULTICODE.

Companies House publications	1
------------------------------	---

Companies House Roadshow	2
Press comment	3
BIS publications or alerts	4
BIS website	5
Business seminar	6
Advisor	7
Networking Groups	8
Own Institute	9
OTHER (SPECIFY)	10

**Awareness of the Act Measurements**

AA

Q9a. Firstly, are you aware of any of the following changes regarding Company Law, even if you haven't taken any direct action?

ROTATE, CATI.

Q9b. And thinking back over the past 3 years [or since this business started if sooner] can you tell me if you have taken any steps to make changes in any of these areas?

ASK 9A AND 9B FOR EACH MEASURE IN TURN

IF NOT AWARE AT 9A DO NOT ASK 9B

LIST SAME MEASURES. ROTATE.

Companies Act Measure		Population				
		Small Private	Medium Private	Large Private	Public	Quoted
1.	Role of directors - Provisions governing the duties owed by directors to the company	✓	✓	✓	✓	✓

2.	Business Review- Provisions requiring directors to draw up a business review and to include it in their annual directors' report			✓	✓	✓
3.	Access to Company Information including reduction in filing times				✓	✓
4.	Facilitating electronic communications -- Making electronic communication the default method for communication with shareholders			✓	✓	✓
5.	Enfranchising indirect investors – Provisions that provide rights to indirect investors through proxy and information rights				✓	✓
6.	Simpler law/accessibility including model articles and CH guidance	✓	✓	✓	✓	
7.	Resolutions and meetings including- Provisions that remove the need for private companies to hold AGM's, changes to the law around making decisions through written resolutions, meeting notices..	✓	✓	✓		
8.	Company secretaries- The removal of the requirement for private companies to have a company secretary.	✓	✓	✓		
9.	Capital maintenance including the removal of the prohibition on financial assistance for the purchase of a company's own shares.			✓		
10.	Directors' addresses- both a service address and the usual residential address must be filed, with only the service address being placed on the public register	✓	✓	✓	✓	✓
11.	Trading disclosures- Provisions governing what details a company must include on signs, stationery, websites etc	✓	✓	✓	✓	✓
12.	Register of shareholders/annual return- Changes so that for most companies,	✓	✓	✓	✓	✓

shareholders' addresses are not included in annual returns. Public companies only provide names and addresses of those with significant shareholdings.					
13. Auditor limited liability agreements- Provisions allowing companies to enter into an agreement with an auditor, limiting the liability of that auditor in cases of professional negligence.		✓	✓	✓	✓
14. NONE OF THE ABOVE	✓	✓	✓	✓	✓

WHERE YES TO ANY ONE OF Q9b 1-13 (if code measures listed below according to size of company), GO TO S1

WHERE 9B=14 GO TO S2

WHERE AT LEAST ONE MEASURE IS CODED IN 9B BUT NOT ANY ONE OF 1,7,8,10 ROUTE TO S2 AFTER S1 ASK MEASURES NOT SELECTED AT 9B

*Small Companies: 1, 6, 7, 8, 10, 11, 12*

*Medium Companies: 1, 6, 7, 8, 10, 11, 12, 13*

*Large Companies: 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13*

*Public Companies: 1, 2, 3, 4, 5, 6, 10, 11, 12, 13*

*Quoted Companies: 1, 2, 3, 4, 5, 10, 11, 12, 13*

**Section One**

WHERE CODED AT LEAST ONE OF CODES 1-13 AT Q9b

I am now going to ask you a few questions about any steps taken within the company in the light of your awareness of changes to company law overall looking generally at issues of time, degree of difficulty, and cost of the steps taken.

Q10. Thinking about the steps taken, to do with all changes you have made, please describe what it involved OPEN QUESTION.

TYPE IN

Q11a. On a scale of 1-5 where 1 means very easy and 5 means very difficult, how easy were the changes in the law to understand?

	11a
Very easy	1
Easy	2
Neither	3
Difficult	4
Very difficult	5
Don't Know	6

**TIME IS RECORDED IN HOURS**

- **PLEASE ENTER NUMBER OF HOURS, IN WHOLE NUMBERS THE FIRST BOX (E.G. 1 HOUR = 1) AND TAB ACROSS TO ENTER PART OF AN HOUR. PLEASE ALLOCATE PORTIONS OF TIME ACCORDINGLY, using two decimal places e.g.**
  - **15 MINUTES = 0.25 HOURS**
  - **20 MINUTES = 0.3 HOURS**
  - **30 MINUTES = 0.5 HOURS**

Q12. How much time did your company spend in responding to the changes in company law of which you are aware? Please think about all elements, from familiarisation with the changes to implementing new processes and/or documentation to the need to make any new or additional submissions to Companies House. We will deal with time and costs from external parties later.

TYPE IN

--

Q13. And thinking about the tasks involved in responding to this/these change/s, **who** within your company was mainly involved in carrying out this/these task/s? Please do not include anyone who is not an employee of the organisation.

DO NOT READ OUT

OWNER/FAMILY MEMBER	1
---------------------	---

DIRECTORS	2
SENIOR MANAGERS	3
OTHER MANAGERS	4
INTERNAL PROFESSIONALS (E.G. LAWYERS, ACCOUNTANTS)	5
TECHNICIANS (E.G. IT SPECIALISTS)	6
ADMINISTRATIVE AND CLERICAL STAFF	7
COMPANY SECRETARY	8
FINANCIAL MANAGER	9
OTHER – SPECIFY	10
DON'T KNOW	11

Q14 And of the [CATI INSERT FROM Q12] hours, how do these hours allocate across these roles?

READ OUT

	Insert hours verbatim
OWNER/FAMILY MEMBER	1
DIRECTORS	2
SENIOR MANAGERS	3
OTHER MANAGERS	4
INTERNAL PROFESSIONALS (E.G. LAWYERS, ACCOUNTANTS)	5
TECHNICIANS (E.G. IT SPECIALISTS)	6
ADMINISTRATIVE AND CLERICAL STAFF	7
COMPANY SECRETARY	8
FINANCIAL MANAGER	9

OTHER – SPECIFY	10
DON'T KNOW	11

CATI CHECK THAT HOUR ALLOCATION MATCHES ORIGINAL ESTIMATE AT Q12. IF NOT, INTERVIEWER CHECK WHETHER RESPONDENT WANTS TO CHECK INITIAL ESTIMATE OR ALLOCATION

Q15. Did your organisation purchase any goods OR services from external suppliers in order to prepare and/or take any necessary steps in the light of the changes?

MUTLICODE

DO NOT READ OUT

None	1
Printing i.e. changes to stationery, signage	2
Software	3
External professional services e.g. lawyers, accountants, business advisers, trade association	5
Prepared guidance materials / manuals / proformas	6
–External training courses	7
Other – specify	8
Don't know	9
Refused	10

[IF Q15 = 5]

Q16. Could you tell us how much the external professional services cost?

TYPE IN POUND STERLING; TYPE -1 IF REFUSED

[IF Q15 = 2,3,6,7,8]

Q17. Could you tell us how much [CATI INSERT RESPONSES FROM Q15] cost in total?

TYPE IN POUND STERLING; TYPE -1 IF REFUSED

**Q18 deleted**

Ask MAXIMUM OF 3- always ask measures 1 and 2 if selected

**Additional Research Questions for each measure (maximum of 3 to be asked)**

I'm now going to ask you a few specific questions about the manner in which you have responded to the measures which you have identified. We'll move onto some more general questions later on in the survey...

**SELECT UP TO 3 MEASURES SELECTED AT 9B**

**IF 9B=1 OR 2 ALWAYS ASK SUB QUESTIONS BELOW, AND RANDOMISE THIRD MEASURE**

**1. Role of Directors (all sized companies)**

The Companies Act 2006 includes a number of provisions relating to directors.

Q19a. Firstly, what changes are you aware of regarding the role of directors and related provisions? (UNPROMPTED)

DO NOT READ OUT

IF 2,3,4,8 ALL CODED AT Q19a SKIP TO Q19c. ASK ALL OTHERS Q19b

Q19b. And are you aware of the following general duties and requirements of a director...? (PROMPTED)

READ OUT THOSE NOT CODED AT 19a

	Q19a	Q19b	Q19c
Introduction of statutory statement of duties	1		1
Provisions to deal with situations in which a director has a conflict of interest	2		
Provisions relating to the liability of directors	3	1	



Provisions relating to the appointment and removal of directors	4	2	
No director under 16	5		
At least one director must be a 'natural person' (i.e. not another company)	6		2
Duty to avoid conflict of interest (175)	7	3	
Duty to promote success of company (172)	8	4	
Other (SPECIFY)	9		
Don't know	10		

IF 1, and 6 ALL CODED AT Q19a SKIP TO Q20. ASK ALL OTHERS Q19c

Q19c. And are you aware of the following changes implemented by the Companies Act 2006...?

(PROMPTED) READ OUT THOSE NOT CODED AT 19a

In particular, the Act includes for the first time a statutory statement of directors' duties which is intended to provide greater clarity and to make the law more accessible (previously these duties were found in case law rather than in the Companies Act).

Q20. Firstly, has the statutory statement had an impact on the way in which you discharge your functions as a director?

Yes	1
No	2
Don't Know	3

IF Q20=1

Q21. What has the main impact been?

DO NOT READ OUT

List options	
I give more consideration to the duties when considering how to exercise my functions as a director.	1
Increase in legal costs	2

Decrease in legal costs	3
Increase in formalities	4
Decrease in formalities	5
No change	6
Not aware	7
OTHER	8
Don't Know	9

Q22 and Q23 deleted

Q24. Are you aware of the changes to the procedure for bringing a derivative action for breach of duty?

Yes	1
No	2
Don't know	3

**IF Q24=1**

Q25 Have these changes affected your behaviour as a director?

Yes	1
No	2
Don't know	3

**Large private, public and quoted companies only**

Q26 Are you aware that the duty to promote the success of the company requires directors to have regard to factors such as the long term consequences of their decisions and the impact of the company's operations on the community and the environment?

Yes	1
No	2

Don't know	3
------------	---

**IF 26=1**

Q27 Has this affected your behaviour as a director?

Yes	1
No	2
Don't know	3

**2. Business Review (large private, public and quoted)**

**Quoted companies only**

Q28. On a scale on 1 to 5 where 1 is very difficult and 5 is very easy, how easy has it been to provide a business review under the new provisions introduced on 1<sup>st</sup> October 2007?

Very difficult	1
Difficult	2
Neither difficult nor easy	3
Easy	4
Very easy	5
Don't Know	6

**Quoted companies only**

Q29. And how easy is the business review to provide now compared with the requirement before 1<sup>st</sup> October 2007?

READ OUT

Easier	1
Same as before	2

More difficult	3
Don't Know	4

**Large private, public and quoted**

Q30. And who within the company prepares the business review?

DO NOT READ OUT

OWNER/FAMILY MEMBER	1
DIRECTORS	2
SENIOR MANAGERS	3
OTHER MANAGERS	4
INTERNAL PROFESSIONALS (E.G. LAWYERS, ACCOUNTANTS)	5
TECHNICIANS (E.G. IT SPECIALISTS)	6
ADMINISTRATIVE AND CLERICAL STAFF	7
COMPANY SECRETARY	8
OTHER – SPECIFY	9
DON'T KNOW	10

**Quoted companies only**

Q31. And how easy has it been to comply with the obligation to provide extra information in the business review as to:

- a) trends affecting the future development of the business,
- b) the environmental, social and community matters affecting the company
- c) the essential contractual arrangements

Please rate on a scale of 1 to 5 where 1 is very difficult and 5 is very easy.

	Q31a	Q31b	Q31c
Very difficult	1	1	1
Difficult	2	2	2
Neither difficult nor easy	3	3	3
Easy	4	4	4
Very easy	5	5	5
Don't Know	6	6	6
Information was not required	7	7	7

**Quoted companies only**

Q32a. Have you had any indications from your shareholders that they find the additional information...

**READ OUT**

Excessive	1
Helpful when considering whether to challenge board decisions or company strategy	2
Useful generally	3
No impact	4
No indications	5
Don't Know	6

**Large private and public**

Q32b. On a scale of 1-5, where 1 is very unhelpful and 5 is very helpful, how useful do your shareholders find the information within the business review?

Very unhelpful	1
----------------	---

	2
	3
	4
Very helpful	5

**3. Improve shareholder access to information (public and quoted only)**

*Filing dates*

**AA**

Q33. Are you aware of the time limits for filing your accounts with Companies House?

Yes	1
No	2
Don't know	3

Q34. The period for filing has been reduced under the CA 2006 from 10 months to 9 months (from the financial year end) for private companies and from 7 months to 6 months for public companies. Have you filed accounts under these new timescales?

Yes	1
No	2
Don't know	3

IF 34=1 GO TO 35a

IF 34=2,3 ASK 35b

Q35a. Has the impact of the change been..

Q35b Do you anticipate the impact of the change being...

READ OUT

No impact	1
Some, but insignificant	2
Neither helps nor hinders	3
Presents significant difficulties	4
is unworkable	5
Don't know	6

IF 34=1 ASK 36a

IF 34=2, 3 ASK 36b

Q36a. Has the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within 6 months of the financial year end had an impact on procedures?

Q36b. Do you anticipate the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within 6 months of the financial year end having an impact on procedures?

Yes	1
No	2
Don't know	3

IF 36a=1 and 34=1 ask 37a

IF 36b=1 and 34=2, 3 ask 37b

Q37a And has this impact been...?

Q37b. And do you anticipate this impact being..

READ OUT

No impact	1
Some, but insignificant	2

Neither helps nor hinders	3
Presents significant difficulties	4
is unworkable	5
Don't know	6

Quoted companies only

Q38. Have you had any feedback from shareholders on the requirement (quoted companies only) to publish a variety of information (poll results, annual financial statements and reports) on a website?

Yes	1
No	2
Don't know	3

IF Q38=1

Q39. And how useful have these website requirements been according to feedback? Please rate on a scale of 1-5 where 1 is not useful at all and 5 is very useful.

Not at all useful	1
	2
	3
	4
Very useful	5
Don't know	6

**4. Facilitating electronic communications (large private, public and quoted).**

Q40. Have you sought and received shareholder approval to use website communications?

Yes	1
-----	---



No	2
Don't know	3

**IF Q40=1**

Q41 Have you used the website default procedure whereby shareholders who do not respond to a request from the company for agreement to website communications are deemed to have agreed?

Yes	1
No	2
Don't know	3

**IF 41=2**

Q42. How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5

Q43 Have you asked your shareholders to provide an email address for communications from the company?

Yes	1
No	2
Don't know	3

Q44. In the event that you use electronic communications with shareholders, what has been the impact?

READ OUT

Cost savings	1
Improved the speed with which the company can communicate with its shareholders	2
Improved accessibility to information for shareholders	3
Reduced accessibility to information for shareholders	4
Alienated smaller shareholders	5
OTHER	6
None	7
Don't know	8

**IF Q44=1**

Q44a Can you quantify any cost savings from using e-communications, especially any resulting reduction in paper communication (printing and distribution costs, in particular)

WRITE IN VERBATIM

**5. Enfranchising indirect investors – rights through proxy and information rights (public and quoted)**

Q45. Has your company altered its articles to allow members to nominate others to exercise the member's rights to the extent permitted by the Act?

Yes	1
No	2
Don't know	3

**IF Q45=2**

Q46 How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5
Don't know	6

Quoted companies

Q47. Members may now nominate other persons to receive information from the company, is this something which your members have taken advantage of ?

READ OUT

Yes a lot	1
Yes, a few	2
No	3
Don't Know	4

Q48 How do you seek to engage with your major shareholders?

DO NOT READ OUT

Meetings	1
Verbal communication	2
Written communication- post	3
Written communication- email	4
Other (specify)	5

Q49. How helpful do you find that engagement? Please rate on a scale of 1 to 5 where 1 is very

unhelpful and 5 is very helpful.

Q50 And how helpful do you believe that your major shareholders find your current engagement with them? Again please rate on a scale of 1 to 5 where 1 is very unhelpful and 5 is very helpful.

Very unhelpful	1
	2
	3
	4
Very helpful	5
Don't know	6

**6. Simpler law/accessibility including model articles and CH guidance (small, medium, large, public)**

ONLY 1 AND 2 TO BE ASKED FOR PUBLIC COMPANIES

Q51. And can you remind me, which, if any, of the following simplification measures have been adopted by your company?

READ OUT

Has your company adopted the new model articles, in either an amended form, or unaltered?	1
Has your company amended your articles generally to simplify them in line with the 2006 Act	2
Does your company no longer have a company secretary?	3
Does your company no longer hold annual general meetings (if private company)	4
Has your company adopted a simpler method of changing its name?	5
Has your company used the simpler method of capital reduction by solvency statement	6

Has your company taken advantage of the ability to execute documents by a sole director	7

**If Q51 = 1**

Q51a. And was the version of the model articles that your company adopted amended in any way, or was it unaltered?

DO NOT READ OUT

Amended	1
Unaltered	2
Don't know	3

Q52. What has been the impact of the simplifications adopted on the conduct of the company's affairs?

MULTICODE.

READ OUT

LIST	
No change	1
Too early to tell	2
Positive impact in terms of speed of business	3
Positive impact in terms of costs of business	4
Negative impact in terms of speed of business	5
Negative impact in terms of costs	6
Don't know	7

MEDIUM AND LARGE PRIVATE, PUBLIC AND QUOTED ONLY

Q52a. Are you aware of changes implemented in CA 2006 which mean that some provisions in your memorandum of association now form part of your articles of association?

Yes	1
No	2
Don't know	3

**7. Resolutions and meetings including: AGMs, written resolutions, meeting notices.**

AGMs

IF Q51=4

Q52b. Firstly, does your company no longer hold annual general meetings?

Yes	1
No	2
Don't know	3

IF 52b=1

I am now going to ask you a few questions as you are no longer holding AGMs...

Q53. And how many shareholders do you have?

<2	1
3-10	2
11-20	3
21-50	4
51-100	5
More than 100	6

IF 52b=1

Q54. What was the main reason for you deciding not to hold annual general meetings?

READ OUT

Didn't hold meetings anyway	1
cost savings from lack of formalities	2
Practical Convenience	3
Speed of decision making	4
To avoid discussions with minority shareholders	5

IF 54=2

Q55. Can you quantify the cost savings arising?

WRITE IN VERBATIM

*Private companies only*

*Written resolutions*

AA

Q56. Do you use the written shareholder resolution procedure?

Yes	1
No	2
Don't know	3

**IF Q56=1**

Q57. Please can you give me one key benefit and one key drawback of using the written shareholder resolution procedure?

**DO NOT READ OUT**

	Benefit	Drawback
Time saving		
Cost saving		
Extra time in preparing information		
Less dependent on shareholder availability		
More flexibility		
Less flexibility		
Refused		
Don't Know		

IF Q56=2

Q58 How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5
Don't Know	6

## 8. Company secretaries

### Private Companies only

The Companies Act 2006 removes the requirement for a private company to have a Company Secretary



**IF Q7= 8 DO NOT ASK**

Q59. Do you have a Company Secretary?

IF Q59=2,3 ASK Q60

Q60. Did you ever have a Company Secretary?

	Q59	Q60
Yes	1	1
No	2	2
Don't know	3	3

IF Q59=2 and Q60=1

Q61. And have you encountered cost savings from this change?

Yes	1
No	2
Don't know	3

IF Q61=1 ASK Q62

Q62. What would you estimate these cost savings be?

to

IF Q59=2 and Q60=1

Q63. If you are a private company and you have ceased to appoint a company secretary or have never appointed a company secretary, who now undertakes the functions of a company secretary?

**DO NOT READ OUT**

OWNER/FAMILY MEMBER	1
CHIEF EXECUTIVE	2
MANAGING DIRECTOR	3
FINANCE DIRECTOR	4
OTHER DIRECTOR	5
IN-HOUSE LEGAL ADVISER	6
ACCOUNTANT	8
OUTSOURCED	9
HUMAN RESOURCES / PERSONNEL MANAGER	10
OTHER – SPECIFY	11
Don't know	12

IF Q59=2 and Q60=1

Q64 Are there any other impacts from doing without a company secretary?

WRITE IN VERBATIM

**9. Capital maintenance including financial assistance**

Question for large private company

Q65. Have you /your company previously had legal advice on the prohibitions on financial assistance given by a company for the purpose of the acquisition of shares in the company?

Yes	1
No	2
Don't know	3

Q66. Are you aware of the relaxation of those prohibitions on financial assistance in the CA 2006?

Yes	1
No	2
Don't know	3

IF 66=1

Q67 Do you believe there to be cost savings from this relaxation?

Yes	1
No	2
Don't know	3

IF 67=1

Q68. And what do you believe the impact of this relaxation to be?

WRITE IN VERBATIM

IF Q51=6.

Q69. Just to recap, has your company used the new method of reduction of capital supported by a solvency statement?

ASK ALL OTHERS

Q69.Has your company used the new method of reduction of capital supported by a solvency statement?

Yes	1 CONTINUE
No	2 SKIP TO NEXT SECTION
Don't know	3 SKIP TO NEXT SECTION

IF Q69=1

Q70. Do you think this was an easier approach than the existing court-based route?

Yes	1 GO TO Q71
No	2 GO TO Q72
Don't know	3 SKIP TO NEXT SECTION

IF 70=1

Q71. In what way?

IF Q70=2

Q72 Why not?

**10. Directors' residential addresses**

Q73. Have you provided a new service address to Companies House for the public record (to replace the use of the residential address as the service address)?

Yes	1
No	2
Don't know	3

IF 73=2

Q74 How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5
Don't know	6

IF Q73=1

Q75 Why did you choose to change the address listed on the public record?

READ OUT

Security from personal threats or intimidation	1
Privacy from shareholders	2
Privacy from creditors	3
Because the Option was available	4
Don't know	5

Q76. Have you had complaints about the failure to provide a residential address?

Yes	1
No	2
Don't know	3

IF Q76=1

Q77. From whom and what consequences arose?

WRITE IN VERBATIM

**11. Trading disclosures**

Q78. Are you aware that a company's name and the address of its registered office must be included in business letters and websites?

Yes	1
No	2
Don't know	3

Q79. And, are you aware of the obligations to display the company’s name in all company documentation and in signs at the registered office and at all other business premises? (Interviewer, if asked prompt: also includes particulars at inspection place and other business locations)’.

Yes	1
No	2
Don’t know	3

Q80. Have you or any other director taken steps to ensure that the company complies with these disclosure requirements?

WRITE IN VERBATIM

**12. Register of shareholders/annual return**

*Register of shareholders*

Q81. Are you aware that the Act reduces the period for keeping details of former shareholders on the register?

Yes	1
No	2
Don’t know	3

Q82. Have you applied to the court to prevent someone having access to the company’s register of shareholders?

Yes	1
No	2
Don’t know	3

IF Q82=2

Q83 How likely do you think it is that someone may seek access to your register of shareholders for dubious reasons? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5
Don't know	6

IF Q82=2

Q84 Are you aware that you can apply to the court to prevent access to the register if you think it is wanted for dubious reasons?

Yes	1
No	2
Don't know	3

Q85 and Q86 deleted

Q87. And, are you aware of any other impacts as a result of the changes to the rules governing access to the register?

Yes	1
No	2
Don't know	3

IF Q87=1

Q88. Please could you describe what this/ these were.

WRITE IN VERBATIM

**Annual return**

Q89. Have there been benefits to you or your shareholders from the provision to remove shareholders' addresses from the annual return?

Yes	1
No	2
Don't know	3

Q90 deleted

Q91 Are you aware of any concerns arising as a result of the removal of shareholders' addresses?

Yes	1
No	2
Don't know	3

IF Q91=1

Q92. Please could you describe what this/ these are?

WRITE IN VERBATIM

**13. Auditor limited liability agreements**

MEDIUM AND LARGE PRIVATE, PUBLIC AND QUOTED ONLY

Q93. Has your company entered into an auditor liability agreement?

Yes	1
No	2



Don't know	3
------------	---

IF Q93=1

Q94. What benefits does the company obtain from the agreement?

WRITE IN VERBATIM

IF Q93=1

Q95 And when was the Limited Liability Agreement put in place?

DO NOT READ OUT

April- December 2008	1
Jan- October 2009	2
October 2009- present	3
Don't Know	4
Other (write in)	5

IF Q93=2

Q96. What would incentivise you to make use of this option?

WRITE IN VERBATIM

**Ask all**

Q97. And, considering all changes you have made, which changes do you feel have been most beneficial for your company in terms of flexibility?

Q98. And, considering all changes you have made, which changes do you feel have been least beneficial for your company in terms of flexibility?

Q99. And, considering all changes you have made, which changes do you feel have been most beneficial for your company in terms of cost savings?

Q100. And, considering all changes you have made, which changes do you feel have been least beneficial for your company in terms of cost savings?

READ OUT (ONLY MEASURES CODED AT 9B). MULTICODE.

	Q97	Q98	Q99	Q100
Directors Duties	1	1	1	1
Business Review	2	2	2	2
Improve shareholder access to information	3	3	3	3
Facilitating electronic communications	4	4	4	4
Enfranchising indirect investors – rights through proxy and information rights	5	5	5	5
Simpler law/accessibility including model articles and CH guidance	6	6	6	6
Resolutions and meetings including: AGMs, written resolutions, meeting notices.	7	7	7	7
Company secretaries	8	8	8	8
Capital maintenance including financial assistance	9	9	9	9
Directors' residential addresses	10	10	10	10
Trading disclosures	11	11	11	11
Register of members/annual return	12	12	12	12
Auditor limited liability agreements	13	13	13	13
None	14	14	14	14

**Q101 deleted**

Small companies only

ASK IF AT LEAST ONE MEASURE CODED AT Q9a

Q102. To what extent do you agree that the Companies Act 2006 assists small companies? Please rate on a scale of 1 to 5 where 1 is do not agree at all and 5 is completely agree.

Do not agree at all	1
	2
	3
	4
Completely agree	5
Don't Know	6

**AA**

Q103 The Companies Act 2006 also aims to reduce the regulatory burden of company law. To what extent do you agree the aim is being met? Please rate on a scale of 1 to 5 where 1 is do not agree at all and 5 is completely agree.

Do not agree at all	1
	2
	3
	4
Completely agree	5
Don't know	6

**Section Two**

WHERE CODED 14 AT Q9B

OR

WHERE AT LEAST ONE MEASURE IS CODED IN 9B BUT NOT ANY ONE OF 1,7,8,10  
ROUTE TO S2 AFTER S1 AND ASK MEASURES (1,7,8,10) NOT SELECTED AT 9B (FROM Q107a)

FOUR MEASURES TO BE ASKED ABOUT: 1, 7, 8, 10 (ROLE OF DIRECTORS, RESOLUTIONS AND MEETINGS, DIRECTORS' ADDRESSES, COMPANY SECRETARIES)- ALL FOUR TO BE ASKED WHERE 9B=14

**General question areas**

To give you some background, the Companies Act 2006 was fully implemented on 1<sup>st</sup> October 2009 and aims to enhance the performance of companies across the UK, by simplifying and improving the framework of legislation. Several measurements have been introduced in order to do so.

IF Q8=1

Q104. How did you hear about these changes?

DO NOT READ OUT. MULTICODE.

Another business owner	1
Employee or manager of this business	2
Employee or manager of another business	3
Friend/relatives, generally	4
Solicitor	5
Accountant	6
BIS	7
Businesslink	8
Companies House	9
IOD	10
Trade association	11
HMRC	12
This survey	13
Haven't heard	14
Other- SPECIFY	15
Don't know	16

IF Q8=1

Q105. And did you make any subsequent changes?

Yes	1
No	2
Don't know	3

IF Q105=1

Q106. And in which area/s did you make any changes?

READ OUT

Directors Duties	1
Business Review	2
Improve shareholder access to information	3
Facilitating electronic communications	4
Enfranchising indirect investors – rights through proxy and information rights	5
Simpler law/accessibility including model articles and CH guidance	6
Resolutions and meetings including: AGMs, written resolutions, meeting notices	7
Company secretaries	8
Capital maintenance including financial assistance	9
Directors' addresses	10
Trading disclosures	11
Register of shareholders/annual return	12

Auditor limited liability agreements	13
None of the above	14

If 1-13 coded route to relevant measure in Section 1

Thank you. I'm now going to ask you a few questions regarding your awareness of certain changes that the Act implemented....

**1. Role of Directors**

**IF CODE 1 AT Q9A**

**AA**

Q107a. Firstly, what changes are you aware of regarding directors' duties and provisions?  
(UNPROMPTED) DO NOT READ OUT

IF 3,4,7,8 ALL CODED AT Q107a SKIP TO Q107c. ASK ALL OTHERS Q107b

Q107b. And are you aware of the following general duties and requirements of a director...?  
(PROMPTED) READ OUT

	Q107a	Q107b	Q107c
Introduction of statutory statement of duties	1		1
Provisions to deal with situations in which a director has a conflict of interest	2		
Provisions relating to the liability of directors	3	1	
Provisions relating to the appointment and removal of directors	4	2	
No director under 16	5		
At least one director must be a 'natural person'	6		3
Duty to avoid conflict of interest (175)	7	3	
Duty to promote success of company (172)	8	4	
Other (SPECIFY)	9		

Don't know	10		
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IF 1,5,6 ALL CODED AT Q107a SKIP TO Q108. ASK ALL OTHERS Q107c

Q107c. And are you aware of the following changes implemented by the Companies Act 2006...?  
 READ OUT

(PROMPTED)

IF DO NOT CODE 1 AT 9A

Q108. For the first time the Companies Act 2006 contains a statutory statement of directors' duties which apply to all directors. Now that you are aware of the existence of the statement, would you now:

READ OUT

Take legal advice as to the nature of the directors duties	1
Take advice from the company's accountant as to the nature of the directors' duties	2
Look to Companies House for guidance as to the nature of the duties	3
Look to the media for guidance	4
Not look for guidance	5
Take no action	6

***7.Resolutions and meetings including: AGMs, written resolutions, meeting notices.***

**(Small, medium, large)**

Q118. Do you hold AGM's?

Yes	1
No	2
Don't know	3

IF Q118= 1

Q119. The Companies Act 2006 no longer requires private companies to hold an annual general meeting, is this change something which is of assistance to your company?

Yes	1
No	2
Don't know	3

AA

Q120. Shareholder decisions may now be taken by a majority of the shareholders by a written resolution (rather than unanimity that previously required). Are written resolutions something that you would now consider using?

Yes	1
No	2
Don't know	3
Use already	4

IF Q118=2 AND Q120=2

Q121. And how do you currently take decisions?

List	1
AGMs	2
Written resolutions	3
....	4

**8. Company secretaries**



**(Small, medium, large)**

IF Q7=8 DO NOT ASK

Q122. Does your company have a company secretary?

Yes	1
No	2
Don't know	3

IF Q122= 1

If Q122=2,3 Skip to Q125

Q123. The Companies Act 2006 abolishes the requirement for private companies to have a company secretary. Would you now consider abolishing the post in your company?

Yes	1
No	2
Don't know	3

IF Q123=1

Q124. And would you expect this to lead to cost savings?

Yes	1
No	2
Don't know	3

***10.Directors' addresses***

AA

Q125. Have you changed the service address registered at Companies House for the public record (to replace the use of the residential address as the service address)?

Yes	1
No	2
Don't know	3

IF Q125=2

Q126. The address on the public record for all directors is now a service address. Residential addresses are now protected. But for any director in post on 1 October 2009, the residential address is given as the service address until a different service address is filed. How likely would you be to take advantage of this so as to change your address on the public record? Please rate your likelihood on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely.

Very unlikely	1
	2
	3
	4
Very likely	5
Don't know	6

## **SECTION THREE: GENERAL QUESTIONS FOR ALL**

Thank you. We are nearly at the end of the survey. I'm just going to ask you a few more general questions now about your business and your views on aspects of the Companies Act 2006.. .

Q132. Overall, how well would you say you understand the issues concerning the Companies Act 2006 as they apply to your company?

READ OUT

Completely	1
------------	---

Quite well, but not completely	2
Not very well	3
Not at all well	4

Q133. In so far as you are aware of the CA 2006, would you agree that Company law has been simplified (on a scale of 1-5 where 1 is do not agree at all and 5 is completely agree)?

DO NOT READ OUT

Do not agree at all	1
	2
Neither agree nor disagree	3
	4
Completely agree	5
Don't know	6

Q134. Have you used advisors or information from other sources, during company formation, when running your company or when considering specific company law issues?

Yes	1
No	2
Don't know	3

[IF Q134 = 1]

Q135. Which sources do you use? Please include both professional (e.g. legal, government departments) and non-professional (e.g. friends and colleagues) sources.

[DO NOT PROMPT]

Another business owner	1
------------------------	---

Employee or manager of this business	2
Employee or manager of another business	3
Friend/relatives, generally	4
Solicitor	5
Accountant	6
BIS	7
Businesslink	8
Companies House	9
IOD	10
Trade association	11
HMRC	12
CBI	13
ICSA Registrars Group	14
APCIM	15
ABI	16
NAPF	17
UK shareholder Association	18
TUC	19
FSB (Federation of Small Businesses)	20
Law Society	21
ICAEW	22
ICSA	23
ACCA	24
CAB	25

SOCA	26
INSS	27
QCA	28
External courses	29
Trade magazines	30
Media/ press	31
Internet	32
ASB	33
Other- SPECIFY	34
Don't know	35

*Ask all (if code more than one at Q135)*

Q136. Which of these is the source you use the most?

*IF Q135=5 OR 6 ASK Q137*

Q137. What tasks does your accountant/ solicitor help you with? Do they...

READ OUT

Draw up accounts	1
Submit the annual return	2
File documents with Companies House	3
Organise shareholder meetings ( if meetings required)	4
Deal with HMRC	5
Other (SPECIFY)	6
None	7

Q138. And is there anything further that BIS could do or support they could offer for you to feel less need to employ an accountant/ solicitor?

WRITE IN VERBATIM

*IF Q135=5 OR 6 ASK Q139*

Q139. Does your accountant and / or solicitor keep you updated on legal changes and compliance requirements in the field of company law?

DO NOT READ OUT. MULTICODE.

Only if I ask	1
Once a week or more	2
Every 1-3 weeks	3
Monthly	4
Occasionally	5
Every couple of months	6
Annually	7
As and when required	8
Don't have an accountant or a solicitor	9
DON'T KNOW	10

Q140 deleted

AA

Q141. Through which channel of communication would you prefer to receive news of Company Law changes that may affect you?

DO NOT READ OUT

--	--

By post/ direct mail	1
Email	2
Over the telephone	3
Face to face	4
Website	5
OTHER (SPECIFY)	6

AA

Q142. Do you use the Companies House website as a source of information on company law?

Yes	1
No	2
Don't know	3

IF Q142=1

Q143 And how satisfied are you with the guidance and usefulness of the information provided on the Companies House website? Please rate on a scale of 1-5 where 1 is very unsatisfied and 5 is very satisfied.

Very unsatisfied	1
	2
	3
	4
Very satisfied	5

Don't know	6
------------	---

Q144. How would you rate the guidance provided by Companies House overall, on a scale of 1-5 where 1 is very unhelpful and 5 is very helpful?

Very unhelpful	1
	2
	3
	4
Very helpful	5
Don't know	6

IF Q135=33

Q145. And finally, thinking about the ASB (the Accounting Standards Board) guidance, on a scale of 1 to 5 where 1 is not at all effective and 5 is very effective, how effective do you think the guidance has been?

Not at all effective	1
	2
	3
	4
Very effective	5
Don't know	6

[ALL SELECTED FROM Qx]

Screener questions deleted

Q146. And finally, we'll be revisiting a number of organisations that have been interviewed, in order to gather more information and provide us with case studies. In principle, would you be happy to help



us with this? You don't need to make a definite commitment now, it will just let us flag you on the database as someone to check with in the coming weeks.

If yes, confirm contact details.

If no, thank and close

## 4.2 Stakeholder topic guide

### Stakeholders interview topic guides

#### 1. Introduction

As you may know, BIS is charged with developing policy that will grow the economy, from higher education, skills and science to innovation, enterprise and business. As part of its role, BIS have reformed and simplified the company law framework in the new Companies Act 2006. BIS have commissioned ORC International to conduct an evaluation of the impact of the Companies Act 2006 to assess whether the Act is meeting its stated policy objectives.

This interview will be carried out within the guidelines of the MRS Code of Conduct. This means that any comments that you make will be treated confidentially and your views will not be attributed to you as an individual or your organisation, unless you give us your permission otherwise.

I will be tape-recording this interview so I don't have to take notes while we are having our discussion. This recording will only be used by me and the rest of the research team at ORC International. Are you happy for me to tape-record this interview?

Just to start, can you tell me a bit about your organisation?

#### PROMPT

- What you do
- Who is target audience (size/ sector)
- Services/ support offered
- Queries received from businesses/ advisory help given
- Relationship with BIS

## **2. Stakeholder Awareness/ Implementation of the Act**

Firstly, what do you know of the Companies Act 2006 and it's predecessors?

PROMPT

- Why it was introduced
- Specific measures involved
- Consultation on its content
- Speed of introduction

## **3. Business Awareness/ Implementation of the Act**

And do you think (in your sector), businesses are aware of the Company Act 2006?

PROMPT

- Aware generally of Company Law/ the Act (of varying sizes)
- Aware of specific measures
- Do they need to be?
- How did they find out about the Act?
- General view on awareness and extent to which BIS/CH raised awareness

## **4. Business compliance**

Have businesses made changes as a result of the 2006 Companies Act?

PROMPT

- General uptake/ key changes
- Public/ private
- Size of business
- Who initiated changed- professional advisors or businesses themselves?
- Who was involved (accountants/ third parties)?
- Compliance with measures

**5. Measure Specific (dependent upon respondent knowledge)**

What's your opinion on the various measures included as part of the Companies Act 2006?

PROMPT

- List measures (see accompanying notes/ further question areas if time/ aware)
- Couple of sentences of what you think the change within each measure has achieved
- Probe as necessary (Why, What, How, Who?)

**6. Evaluating Act objectives**

Three objectives of the Act:

*Objective 1: Enhancing shareholder engagement and a long-term investment culture*

*Objective 2: To ensure better regulation and a 'Think Small First Approach'*

*Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.*

Do these sound familiar?

*Objective 1: Enhancing shareholder engagement and a long-term investment culture*

PROMPT

- Has the Act met this objective?
- Why do you say that?
- Specific examples of doing it/ not meeting this
- Any exceptional cases- size/ sector?
- What is the difference between now and before?
- What changes have made it easier?

Repeat for objectives 2 and 3

*Objective 1*

*Objective 2*

*Objective 3*

## **7. Overall evaluation**

Overall, has the Companies Act 2006 modernised and simplified Company Law? Why do you say that?

PROMPT

- Impact for your members/ UK business?

Can identify something positive and something negative about the reform?

- Any unanticipated effects?
- Anything missed/ further reform needed?
- 

Do you have any anecdotal evidence of cases you have come across, where:

- Costs incurred (if so where?)?
- Savings realised?
- Any best practice examples/ advice?

How do you/ businesses see the role of Company Law?

1. Loose framework giving flexibility for companies
2. Precise but limited framework giving certainty as to the legal position
3. Accept that there is a public interest in the regulation of business and that it's for Parliament to decide on framework.

Finally, do you think there is anything that we can do in order to encourage participation in this research by businesses?

**THANK AND CLOSE**

### 4.3 Case study topic guide

#### Case studies: discussion guide

##### Introduction

As you may know, BIS is charged with developing policy that will grow the economy, from higher education, skills and science to innovation, enterprise and business. As part of its role, BIS have reformed and simplified the company law framework in the new Companies Act 2006. BIS have commissioned ORC International to conduct an evaluation of the impact of the Companies Act 2006 to assess its impact on UK companies.

We have completed a survey of 1,000 businesses in the UK and we are now following this up with a series of case studies of businesses to explore the issues in more detail.

This interview will be carried out within the guidelines of the MRS Code of Conduct. By agreeing to take part in this case study, your experiences and thoughts on changes to company law will be written up and included within the final report to be provided to BIS. I will be tape-recording this interview so I don't have to take notes while we are having our discussion. Are you happy for me to tape-record this interview?

Just to start, can you tell me a bit about your company?

##### PROMPT

- Role at company
- What the organisation sells/ services provided
- Who is target customer (size/ sector/ industry)
- Confirm financial information (turnover/ assets)
- Number of employees
- Date of incorporation to CH
- Use of advisers – financial and legal
- Information on shareholders (numbers and relationship with)

##### General awareness / implementation of the Act

Firstly, what do you know of the Companies Act 2006 and its predecessors?

##### PROMPT

- Why it was introduced
- Specific measures involved
- Speed of introduction
- How did they find out about the Act?
- Use of Companies House information / BIS roadshows / advisors/ other

**CASE STUDY 10 (Company that has made use of the capital reduction by solvency statement - request copy of solvency statement) - large private**

**Capital Maintenance**

*Since 1 October 2008 private limited companies, as an alternative to passing a special resolution and obtaining court approval, have the option of reducing the amount of their share capital by special resolution supported by a solvency statement made by the directors.*

- How were you made aware of the change regarding the process of reducing share capital?
- Background on reasons for reducing amount of share capital
- Probe on positives and negatives of the method
- Who was involved/ what sort of activities were undertaken to use the new method of reduction of capital supported by a solvency statement? Probe on details of involvement by job title and for the processes undertaken
- Probe on the use of advisors – what exactly was their role?
- According to the Act, the solvency statement must be made not more than 15 days before the date of the special resolution and must be available to the shareholders when they vote on the resolution to reduce the company's share capital- when was the statement produced and what was the result of the vote?
- According to the Act, in forming the opinions contained in the solvency statement, the directors must take into account all of the company's liabilities (including contingent or prospective liabilities). How did you go about doing this?
- How does this compare with the former process of passing a special resolution and obtaining court approval? Shortened process? Cost savings?
- Do you have any concerns about not having the security of court involvement in the revised process?
- Has the economic climate reduced the likelihood of take up of the use of this procedure (i.e. solvency statements)?
- After your experience would you recommend this route for other companies?

**CASE STUDIES 1/12- medium/ large company with high awareness/ made changes and small company with high awareness/ made changes and agrees simplified Company Law**

- List measures again and note awareness of each and within which areas they have made changes (see each section on various measures and questions). Compare responses to those made during their telephone survey interview
- How were you first made aware of such changes? Consulted third parties? Advisors? CH guidance? Views on all sources of awareness...
- How did you go about making such changes? Who was involved/ time involved/ costs incurred? Benefits generated?
- For other measures that you are aware of but have not made changes- probe as to why changes haven't been made/ likelihood of making changes?
- Which change was most/ least beneficial in terms of flexibility/ cost savings? Why....
- Small only- Why do you agree that changes have simplified Company Law? Is there a particular change that has influenced this?
- Medium/ large company- Overall thoughts on whether think changes have simplified/ modernised Company Law and reasons why.

**CASE STUDY 2 (companies with awareness of most measures but which have made no associated changes) - small medium**

- List all measures aware of, and for each in turn ask what their understanding is of what the change involves/ possible benefits that could be derived?
- How did you become aware of changes in the first instance?
- Ask for each why they have not made changes and for future intentions relating to each measure
- If they are intending to make changes, probe on why they have not introduced to date ie what are the barriers to implementation?
- Read through descriptions of what the change involves and possible benefits- still unlikely to make change?
- Anything BIS could do to encourage them to make further changes? Further guidance?



**CASE STUDY 8/9 (Private company that has made changes to resolutions and meetings- request copy of Notice of the intention to propose a resolution) - small, medium or large**

[http://www.companieshouse.gov.uk/about/gbhtml/ca\\_gba7.shtml#two](http://www.companieshouse.gov.uk/about/gbhtml/ca_gba7.shtml#two)

**Resolutions and meetings**

*Abolishment of requirement for private companies to hold AGM's. Does not prevent a company holding a GM if it desires or if 10% of shareholders require it.*

*Easier for private companies to take decisions by written resolution; a simple majority of those eligible to vote are required for a written ordinary resolution, or 75% majority for written special resolution to be passed, rather than unanimity.*

*The Act also makes it easier to call meetings at shorter notice (private companies) than the minimum statutory period if a requisite majority of the shareholders agree (default majority has been reduced from 95% to 90%).*

- Where did you hear about these changes in the law?
- What changes have you made regarding resolutions/ meetings? Please describe the process involved/ activities undertaken....Probe on the previous system and details of what they used to do compared with the current system
- Did you seek out third party guidance before carrying out changes? If so from whom, and what was the cost incurred?
- Did you consult guidance from Companies House before undertaking any changes? What were your thoughts on the usefulness of this guidance?
- Did you used to have AGM's? Do you currently hold AGM's? If you used to but no longer do, do you have any concerns from shareholders over no longer holding AGM's? Or any other concerns?
- Have you used the written shareholder resolution procedure? Drawback and benefit? How did you hear about the deregulation? Confirm number of shareholders.
- If you have used the written resolution, what was the motion regarding (background) and was it circulated and agreed to electronically or by hard copy?
- Does your company have external auditors? Were they sent the proposed resolution beforehand? Were they aware they had to?
- Was the resolution passed?

- Do you think the change to only requiring a majority rather than unanimity in voting procedures will have/ has already had an impact?
- Do the company's articles of association state the conditions on members' voting rights? Do members have the same number of votes whether passing a resolution in a poll at a general meeting or on a written resolution? (see further questions on model articles under 'other measures' at end)
- Are there cost savings that may arise if you are no longer holding AGM's?
- Do you think that the change has increased flexibility in how the company operates? Why?
- How does the situation compare pre and post CA 2006?

***CASE STUDIES 3/4 (Company that has made changes relating to Directors' Duties indicating that the changes relating to the statutory statement, duty to promote the business or procedures relating to derivative actions have had an impact)- large, public or quoted***

### **Directors Duties**

*A statutory statement of directors' duties sets out the duties and responsibilities of directors. For example, they will have to promote the success of the company and in doing so have regard to factors such as the environment, community and employees. Codifies the current law.*

- What do you think of first in terms of changes to Directors Duties?
- What are your views of the new statutory statement of directors' duties?
- What is your understanding of the term (statutory statement) and awareness of the broad changes?
- Are there any ambiguities or uncertainties in the measures?

### **172 Duty to promote the success of the company**

*A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole and in doing so have regard to:*

- g) The likely consequences of any decision in the long term*
- h) The interests of the company's employees*
- i) The need to foster the company's business relationships with suppliers, customers and others*

- j) The impact of the company's operations on the community and the environment*
- k) The desirability of the company maintain a reputation for high standards of business conduct*
- l) The need to act fairly as between members of the company*

- What do you interpret 'have regard to' to mean?
- What is your understanding of each?
- How have you as a director had regard to each of the above factors? And does this represent a change in behaviour as to how you/ other directors acted prior to the Act?
- Has the new Act assisted in protecting directors from shareholder pressure to achieve short term gain at the expense of long term progress?
- Do you have long term social/ environmental goals/ objectives?
- Have you sought professional advice on any of the above?
- What have the key impacts been?
- What has been the practical impact? Have changes been made to how the directors discharge their duties?
- How have directors been made aware of the changes? Has the company provided specialist support or further information? How has the board ensured that all directors are aware?
- Have systems or processes changed as a result? How have decision-making processes changed if at all? How often are they reviewed? How does the company demonstrate that processes have been adhered to? What happens in the event of a failure or diversion from agreed processes? What happens when decisions are made outside of formal board meetings – how are these decisions minuted and evaluated against key criteria of 172.
- Probe on management information system changes?
- What is the process for social and environmental reporting? How is the information gathered and disseminated? (link to business review questions below). Who is responsible for this?
- Has 172 produced a cultural change at the company?
- Has there been acknowledgement by the board that it encourages all directors to enquire into the conduct of the company's affairs (in order to ensure that they are doing their duty as directors). Have non

executive directors participated fully in this broad awareness of all factors?

- Probe for any specific examples of business decisions being influenced by the above considerations or the process undertaken to ensure that directors can demonstrate consideration of 172 in decisions that have been taken
- Probe on how information was collected and used to inform decisions? How was the potential impact of the decision on employees, members, the environment and business relationships assessed and evaluated?
- Have you brought in external specialists to help provide specific information or provide consultancy related to the above?
- What procedures have been put in place to enable directors to have good notice of decisions that need to be made by them, and of relevant supporting information? Were these procedures in place before the new Act?
- How did the directors demonstrate consideration was given?
- Have legal costs increased/ decreased as a result?
- Do you keep extra meeting notes etc?
- What has the impact of changes relating to the statutory statement been?

### **Directors Duties, code 172**

*(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.*

*(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.*

### **Note on Creditor protection**

*Section 172(3) makes it clear that the statutory duties set out above are subject to certain obligations of directors to act in the interests of creditors; and for many companies, this is a regular issue. The Act does not, however, set out when such circumstances arise. Weighing up the risk to creditors of any course of action is a necessary part of any director's duty. In a wholly solvent company this may be a matter easily dealt with, but for many companies the task of balancing risk to creditors against profit to shareholders is a constant function of the board. Where the company becomes, or may become insolvent, the risk to creditors becomes acute. At this point it is essential that directors take proper professional advice*

- Are you clear when you should be acting in the interests of company, shareholders and /or creditors as per the revised statement?
- In the recent financial crisis and current economic downturn has there been a greater focus on 172-3 than 172-1?

### **171 Duty to act within powers**

*A director of a company must — (a) act in accordance with the company's constitution, and (b) only exercise powers for the purposes for which they are conferred.*

### **173 Duty to exercise independent judgement**

*(1) A director of a company must exercise independent judgment.*

*(2) This duty is not infringed by his acting— (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or (b) in a way authorised by the company's constitution.*

- Has the company made provisions in its constitution for nominee directors?

### **174 Duty to exercise reasonable care, skill and diligence**

*(1) A director of a company must exercise reasonable care, skill and diligence. (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with — (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and (b) the general knowledge, skill and experience that the director has.*

- Have the directors undergone any specific training related to Directors' duties provisions? Please provide details of exactly what this involved
- Is relevant training readily available?
- Would a professional structure for directors be useful in this context?
- What skills do you deem necessary for directorship? Do they distinguish between what's required for directors and non executive directors? Would they consider skills or being independent as most important for non executive directors?

#### **175 Duty to avoid conflicts of interest**

*1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.*

*(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).*

*(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.*

*(4) This duty is not infringed— (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or (b) if the matter has been authorised by the directors*

*(5) Authorisation may be given by the directors— (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.*

*(6) The authorisation is effective only if— (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted. (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.*

- Have any processes been implemented relating to conflicts of interest?
- Is there a designated individual who provides advice initially on whether the director may be given permission to act?
- Have any of the directors facing actual or possible conflicts of interest by virtue of their position had to take action (either obtaining authority to act from the Board, removing the conflict or resigning their position).
- Was legal advice taken relating to this?
- How do the provisions affect the management of subsidiaries?
- How have non-executive directors been affected by the changes? Have any expressed concern as a result of the changes?
- Do you think/ have you heard of an increase in derivative claims against directors for breach of the duties set out in the statutory statement (from shareholders)? What are your thoughts on potential claims by shareholders?
- Have they decided to take advantage of 175-5 to allow directors to authorise conflicts of interest? Have directors sought authorisation? Have they amended their constitution to allow for authorisation? How do they record authorisations? Will they inform their shareholders as to authorisation?

#### **176 Duty not to accept benefits from third parties**

*(1) A director of a company must not accept a benefit from a third party conferred by reason of—(a) his being a director, or (b) his doing (or not doing) anything as director. (2) A ‘third party’ means a person other than the company, an associated body corporate or a person acting on behalf of a company or an associated body corporate. (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party. (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.*

*(5) Any reference in this section to a conflict of interest includes a conflict*

- Views on clarification of the above?
- How do you deal with and record third party benefits to directors?

**CASE STUDIES 5/6 (Company that has made changes to the Business Review and identified benefits for them or their shareholders/ Company that found changes to the Business Review difficult)- quoted**

**Business Review**

*All companies, apart from small companies, have been required to produce a Business Review for financial years on or after 1 April 2005. With effect from 1 October 2007 Quoted companies also needed to include, to the extent necessary for an understanding of the business, trends affecting the future development of the business, information on the environmental, employee, social and community matters affecting the company, and the essential contractual arrangements.*

- What do you know of the business review in terms of its content and function? (linked to 172)
- Who is involved in the preparation of the business review?
- How long does the preparation of the review now take
- Clear on what is expected within the review? Any uncertainties as to detail required?
- Those who found difficulties- probe as to which area and why?
- What is your role in drawing up and/ or reviewing the business review as a director?
- What guidance was provided internally for directors and / or published externally prior to the Act? What has changed now?

**How easy has it been to provide information on:**

- a) Trends affecting the future development of the business (quoted only)
  - b) The environmental, employee, social and community matters affecting the company (quoted only)
  - c) The essential contractual arrangements (quoted only)
  - d) A fair review of the business
  - d) Principal Risks and uncertainties
  - e) Key performance indicators on both financial and non financial matters
- KPI's- did you have these in place prior to the new requirement? Detail on what areas of performance they track...
  - What are the benefits and drawbacks from the additional material included in the business review and for whom?
  - Did the company find the process of preparing a review helpful in analysing aspects of your performance?
  - To what extent do you consider directors' duties in preparing the business review?



- Do you feel the review helps to encourage forward risk planning? If so in what way/ examples
- How effective has the material been in meeting your shareholder needs? Are your perceptions based on official feedback or are they anecdotal evidence?
- Is it a useful means of communication between you and your stakeholders? Do you think the review is enhancing stakeholder relationships? If so which stakeholders do you have in mind?
- What is the role of your auditor in preparing the business review?
- Any costs incurred in providing additional information?
- Have you used guidance from ASB? Other sources?
- Do you feel more guidance would help? If so what should this cover?
- Were you already reporting on corporate social responsibility and do you add additional material to the business review than that already provided in a CSR report?

**CASE STUDIES 7/15: COST SAVINGS (Company that has identified high levels of cost savings resulting from the implementation of one or more of the measures- eComms)**  
**– Public/ Quoted**

- **Improve shareholder access to information**
- **Facilitating e-communications**

*To enhance the timeliness of company communications to stakeholders (and keep them informed/ engaged)- policy intention is to remove existing Company law requirements for the use of paper communications e.g. companies should be allowed to make their full annual report and accounts or a summary version accessible to shareholders accessible via electronic means unless individual shareholders request a paper copy. This allows companies (subject to shareholder approval) to be able to use electronic communications with shareholders as the default position. This measure will allow (but not require) companies to use websites and email to communicate with their registered members.*

- Could you quantify the cost savings arising from the removal of the requirement to publish public communications via paper means?

- Do you think this saving will continue to be realised? Estimated saving per annum?
- Are you still receiving requests for paper communications? At what level (% of shareholders)?
- To what extent are you still producing hard copies (as a contingency)?
- How much are you still spending on paper?
- Who was involved and what sort of activities were undertaken to comply?
- What do you think are the key advantages of electronic vs paper reports?
- Do you think this development is enhancing stakeholder relationships?
- Have you had any feedback from shareholders (formal or anecdotal) on the changes?
- Passing on the cost of printing to shareholders? Do you write annual reports to be viewed on the screen or do shareholders have to print off?
- Do you think eComms helps or hinders with shareholders and with stakeholders?

### **Enfranchising indirect investors**

*Policy intention is to enhance the rights of proxies so that indirect investors acting as proxies (i.e acting on behalf of someone) to the registered shareholder can exercise all the meeting participation rights which would otherwise rest with the registered shareholder alone.*

Did you amend your articles of association to allow greater involvement from indirect investors? If yes, what changes did they make?

Have shareholders used the changes?

Quoted companies- shareholders could nominate others to receive information rights. Have any of your registered shareholders nominated other persons to receive information rights?

If yes- have these other persons taken up their information rights? Have they been met electronically or by hard copy?

Are you aware of the changes to the rights of proxies affected by the Act?

Have you seen an increase in the use of proxy voting? Has this caused practical difficulties? If so what?

Overall, what do you think are the benefits/ drawbacks of these extended rights?

Enhanced proxy rights make it easier for shareholders to appoint others to attend and vote at general meetings- has this been the case and how have other registered shareholder reacted to this?

To what extent do you think that indirect investors are now playing a fuller role in company proceedings? In what ways and what has brought this about?

**CASE STUDY 13/14 (*Small company that has recently been established and has made use of some of the provisions in the Act, particularly model articles*)**

Please describe the process involved/ activities undertaken in setting up and running a new business under the Companies Act 2006:

- Dealings with Companies House- what did the process involve?
- Registration forms completed online? How did you find out about this option? Easy to complete?
- Annual accounts must be filed at Companies House- has this been done yet and how was the process? Was external help sought?
- [Annual Return](#) must be completed each year to update Companies House with basic details relating to the company- has this been done yet and how was the process? Was external help sought? Why? Filed online?
- Are you running AGM's? If not probe as to why? Number of shareholders?
- Are you filing Directors' service addresses rather than home addresses? Again probe as to why? Future intentions of amending if not previously aware?
- Have you employed a company secretary? Why if so or not?
- Views on clarity of directors duties? Aware of in whose interests they should be acting, and factors they need to have regard to?

In particular how did you find the process of establishing Model articles for your company?

- Did you adopt, amend or add to in any way default model articles? Why/ why not?
- Did you think they were relevant for a company of your size? If not, why?
- Were the model articles easy to obtain? What was difficult, if anything? Where did they obtain them?
- How easy were instructions to follow?
- Did you have to seek external guidance to help amend/ set up the articles?
- Timeframe of the process?

Overall how did you find the process of setting up a new company?

Ask if previously established a small business and to compare then and now

**CASE STUDY 11 (Company that has put an auditor liability agreement in place) - medium, large, public or quoted**

**Auditor Limited Liability Agreements**

*Introduced to strengthen the audit market by limiting auditor liability through agreement between company and auditors.*

When was it introduced?

Why did you introduce the agreement? Who suggested it? Pressure from auditors?

What is the nature of your auditor liability agreement? What matters does it cover? Are there any exclusions?

Is the auditor liability based on a) proportionate share of responsibility for any loss b) fair and reasonable test or c) cap on liability as a fixed monetary sum or an agreed formula

Was there much debate at board level about the agreement?

Did you take external advice before agreeing?

What factors were included in the assessment of whether to proceed? How were they evaluated and how was this process documented?

What are the advantages and disadvantages for the company?

Did you negotiate a cost discount in your auditor's fees linked to this agreement?

How important were the following reasons for undertaking an agreement?

- a) Securing an auditor with relevant skills and expertise (sectoral or geographic coverage)
- b) Securing an auditor at a reasonable price
- c) Securing continuity of auditor
- d) Belief that a proportionality approach is fair in that the auditor's potential liability is matched to the degree of responsibility
- e) Regular use of such agreements with other goods and service providers

What are the advantages and disadvantages for your auditors?

How have the directors demonstrated their compliance with the relevant directors duties (ie that this was in the company's best interests bearing in mind section 172)

Did the company have to consider any sector-specific rules and regulations in entering into the agreement?

How was shareholder agreement obtained? When was it obtained- before or after it was agreed?

What was the process for this? What information was provided to shareholders and in what format? Was there consensus on this?

Why do you think other companies will or will not enter into such an agreement?

Include questions for auditors about experiences in general – how common are such agreements? How many have they been involved in? Future plans etc

Probe on practical impact

### **All other measures**

#### **Company Secretaries**

*Removal of the requirement for private companies to have a company secretary.*

Did you previously have a company secretary?

For what reason/s did you decide to abolish the role? Whose decision was this?

What impact do you perceive this to have had? Cost savings?

Who now undertakes the functions of a Company Secretary? Has someone specific responsibility for dealing with CH? List out functions in turn and who has taken over responsibility.

Impacts from doing without a Company Secretary?

#### **Simpler law/ accessibility including model articles and CH guidance**

*Existing CA 1986 Table A (articles) have been replaced by a simplified set of model articles; concise guidance is also now available for small companies who are using, or thinking of using, model articles.*

*The new model articles will apply to all new companies incorporating under the Companies Act 2006 on or after 1 October 2009.*

How did you find out about changes to model articles? Promotion by intermediaries?

Perceived costs/ benefits?

Views on new model articles and difference from Table A articles?

Did you adopt articles in amended or unaltered form? Or simplified them in line with 2006 Act?

If amended- what was amended?

Who was involved in amending/ altering articles? Time/ cost of amending?

What do you think the impact of the change will be longer-term?

### **Directors' residential addresses**

*Directors will automatically have the option of filing a service address on the public record (rather than their private, home address)*

Please describe the process that you went through to remove the personal address from the public record.

Who was involved? What was the cost of doing so?

What do you think the ramifications will be?

Credit agencies can still access home addresses – is this an issue that has arisen? (is it an issue in general that addresses of existing directors remain on the public record?)

If company perceived to be at risk, are you finding it easier to recruit/ train directors? (Benefits for the biotech industry?)

*If not why did you do it?*

### **Trading disclosures/ business names**

*This removed the duplication between Companies Act and Business names Act Oct 08 requirements- removal of requirement to display company names in locations without customer/ supplier access and outside all company premises.*

How did you become aware of the change in law?

Did you previously display company names in locations without customer/ supplier access?

Who was involved/ what sort of activities undertaken to comply?

Do you think there will be any disadvantages to customers/ suppliers?

Have you encountered any advantages as result of the change?

Do you envisage any cost savings to consumers/ businesses?

Are you aware of their general obligations as to disclosure of information about the company on business communications and business premises? Do you comply with them?

### **Register of members / annual return**

*The Act enables the content of company records to be arranged as directors see fit provided it is adequately recorded. Also reduces the period for keeping details of former members on the register and statutory immunity for claims relating to entries from 20 to 10 years.*

What change did you make within this area?

How did you become aware of this permissive change?

Who was involved/ what sort of activities undertaken?

Have you applied to the court for relief from the obligation to give right of access to the register of members if it appeared that the information was being sought for an improper purpose? Please describe what this process involved if so...

Do you think there will be any additional consequences as a result?

*Companies no longer have to provide members addresses in the annual return (unless traded company) and reduced fraud risk for those members.*

Were you aware of this amendment? What do you think the impact will be/ has been?

### **ASK ALL**

#### **For each of the measures discussed**

- Probe to understand the cost-benefits
- How much time has been spent on familiarisation activity? Since 2006 and over the last year? By whom and at what level?

- How much time has been spent on compliance activity? Changing systems and procedures. Timescales and by whom?
- What external support or services has been provided? By whom or what? (printing, software, external professional services, external training courses, prepared guidance materials)
- Associated costs?
- Have there been any associated cost savings? Please give details – one-off or ongoing? Cost savings by whom?
- General perceptions of the difficulty of compliance
- Probe on future plans
- If not undertaken change, then what is planned for the future?
- What is the impact of company law on your day to day activities?
- How often do you have a company law problem as opposed to tax, planning, employee, health and safety etc problem?

## **ASK ALL**

### **Overall evaluation**

Three objectives of the Act:

*Objective 1: Enhancing shareholder engagement and a long-term investment culture*

*Objective 2: To ensure better regulation and a 'Think Small First Approach'*

*Objective 3: Make it easier to set up and run a company, avoiding unnecessary burdens on the ways companies operate.*

Do these sound familiar?

*Objective 1: Enhancing shareholder engagement and a long-term investment culture*

### **PROMPT**

- Has the Act met this objective?  
Why do you say that?



- Specific examples of doing it/ not meeting this
- What is the difference between now and before?
- What changes have made it easier?

Repeat for objectives 2 and 3

Overall, has the Companies Act 2006 modernised and simplified Company Law? Why do you say that?

PROMPT

- Impact for you and your sector?

Can identify something positive and something negative about the reform?

- Any unanticipated effects?
  - Anything missed/ further reform needed?
-