

KEY FACTS COMPANY LAW



4th edition

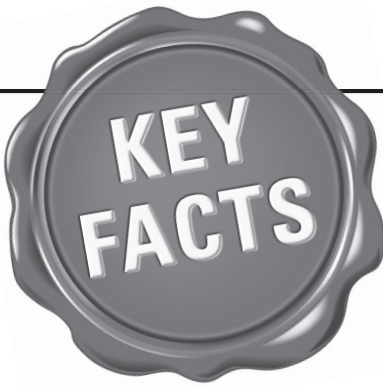
Ann Ridley

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KEY FACTS

COMPANY LAW



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Preface

The Key Facts series is a practical and complete revision aid that can be used by students of law courses at all levels from A-Level to degree and in professional and vocational courses. The Key Facts series is designed to give a clear view of each subject. Most chapters open with an outline in diagram form of the points covered in that chapter. The points are then developed in a structured list form to make learning easier. Supporting cases are given throughout by name and, for some complex areas, facts are given to reinforce the point being made. The Key Facts series aims to accommodate the syllabus content on most qualifications in a subject area.

Company law may be a module of both law and business studies degree courses. It is also a vital subject in many professional and vocational courses. The detail and complexities of the subject can make it difficult for the student. The primary purpose of this book is as a revision aid and it is intended for use in conjunction with other, more substantive text books.

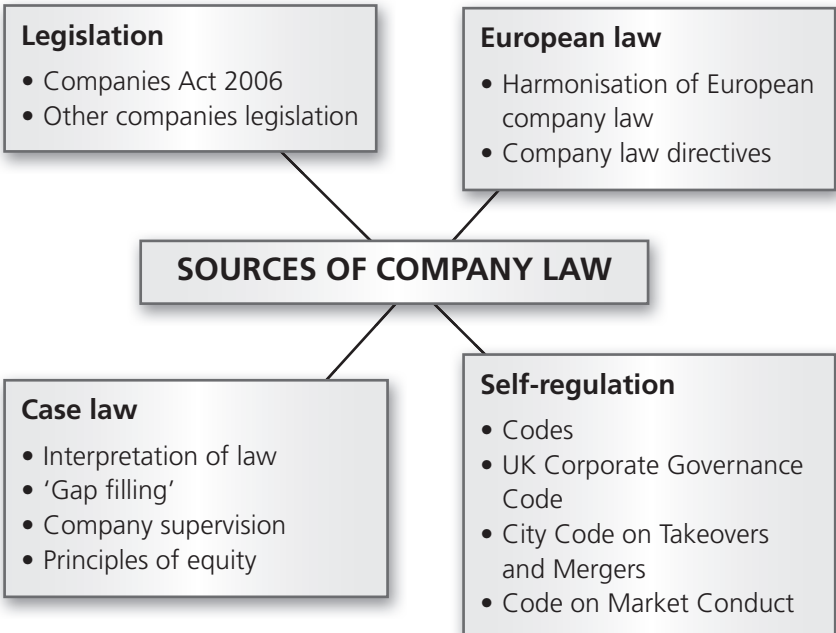
The Companies Act 2006 received the Royal Assent on 8 November 2006. This is a major piece of legislation, running to some 1,300 sections, and is the result of the Company Law Review which set out to modernise and simplify company law. Almost all sections of the Act are in force, following the final commencement date of 1 October 2009. For full details of commencement see the Department for Business, Innovations and Skills (BIS) website. In this book the Companies Act 2006 is treated as if fully in force.

The law is as I believe it to be on 1st January 2011.

1

Sources of company law

This chapter provides a brief summary of the main sources of company law: legislation, case law and European law. The Companies Act 2006 is the result of the most comprehensive review of company law ever undertaken and is the principal Act covering core company law. For useful information see the Department for Business, Innovation and Skills (BIS) website.



1.1 Legislation

1.1.1 Historical perspective

1. Legislation is the principal source of company law.
 - The first Act to allow incorporation was the Joint Stock Companies Act 1844.
 - The Joint Stock Companies Act 1856, sometimes called the 'first modern companies act', revised the system for setting up a company and this Act was the basis for the development of subsequent companies legislation.
 - There followed a long period of acts reforming the law, then a consolidating new Act.
 - Between 1948 and 1985 a number of statutes were passed to amend and add to the law and all of these were consolidated in the Companies Act 1985.
 - The 1989 Companies Act significantly amended the 1985 Act.
2. The Company Law Review was launched in 1998 and was the most comprehensive review of company law ever undertaken.
3. The Terms of Reference of the Company Law Review Steering Group (CLRSG), as set out in *Modern Company Law for a Competitive Economy: The Strategic Framework* (DTI 1999), were:
 - ' (i) To consider how core company law can be modernised in order to provide a simple, efficient and cost-effective framework for carrying out business activity which:
 - (a) permits the maximum amount of freedom and flexibility to those organising and directing the enterprise;
 - (b) at the same time protects, through regulation where necessary, the interests of those involved with the enterprise, including shareholders, creditors and employees; and
 - (c) is drafted in clear, concise and unambiguous language which can be readily understood by those involved in business enterprise.
 - (ii) To consider whether company law, partnership laws, and other legislation which establishes a legal form of business activity together provide an adequate choice of legal vehicle for business at all levels.
 - (iii) To consider the proper relationship between company law and non-statutory standards of corporate behaviour.

- (iv) To review the extent to which foreign companies operating in Great Britain should be regulated under British company law.
 - (v) To make recommendations accordingly.'
4. Wide consultation followed and the CLRSG produced four main documents under the general title *Modern Company Law for a Competitive Economy*. A large number of other reports and consultation papers were produced by the Law Commission, the Department of Trade and Industry (DTI) and the Company Law Review Steering Group itself. There followed two White Papers published in 2002 (*Modernising Company Law*) and 2005 (*The Company Law Reform Bill*). The latter included a draft Bill which, following further consultation and amendment, was introduced to the House of Lords on 1 November 2005.
 5. The Companies Act 2006 received the Royal Assent on 8 November 2006. It repealed most of the Companies Act 1985, the Companies Act 1989 (which amended the 1985 Act) and the Business Names Act 1985.

1.1.2 Companies Act 2006

1. The Company Law Review set out to modernise and reform company law. The extent to which this has been achieved will be revealed over time as the Companies Act 2006 (CA 2006) is interpreted by the courts.
2. The Review aimed to facilitate enterprise by providing a framework of legislation that is clear and accessible, particularly with respect to small companies.
3. The idea of having a separate act for small closely-held companies was dropped early in the consultation and the 2006 Act, like the Companies Act 1985, covers all companies with exceptional provisions for private companies.
4. Corporate governance was a major theme of the Company Law Review, which can be seen in the provisions relating to meetings, shareholder engagement and directors' duties. The codification of directors' duties in Part 10 of the Act was much criticised in the course of consultation as being likely to lead to confusion rather than clarity. In this book, meetings and resolutions are considered in chapter 6, chapter 10 deals with principles of corporate governance, and sections 171–177 CA 2006 relating to directors' duties are described in chapter 12.

5. Ironically, the use of 'plain English' throughout the Act has also been criticised for its potential to bring new uncertainty to complex areas of law which are better described in terms that have acquired particular legal meaning as a result of interpretation by the courts and long-held usage by lawyers.
6. The Act has been implemented in stages over the period from Royal Assent in November 2006 to 1 October 2009. It is now substantially in force and has made significant changes to company law. Cases on the 2006 Act are beginning to come before the courts. Whether the aims of the reforms have been achieved will be seen as the provisions are applied and interpreted in the course of judicial decision-making.

1.1.3 Other companies legislation

1. As well as the CA 2006, the following Acts are important in the study of company law:
 - Criminal Justice Act 1993, which covers insider dealing (see chapter 13);
 - Insolvency Act 1986 (chapter 16);
 - Company Directors Disqualification Act 1986;
 - Financial Services and Markets Act 2000 (chapter 7 (offering shares to the public) and chapter 13 (market abuse));
 - Limited Liability Partnerships Act 2000;
 - Enterprise Act 2002 (chapter 16);
 - Corporate Manslaughter and Corporate Homicide Act 2007 (chapter 3).
2. A large number of orders, regulations and other statutory instruments also contribute to the body of company law.

1.2 Harmonisation of European company law

1. The harmonisation of company law, provided for in the Treaty of Rome (Art 44), has had a far-reaching impact on domestic company law and has resulted in a number of changes to the law.
2. The harmonisation programme has been carried out through a number of directives, which member states must enact into domestic law. Most are implemented by Acts of Parliament and are now contained in the

CA 2006. There have been 14 directives so far, of which the fifth, ninth and fourteenth have been withdrawn.

3. Changes introduced into English company law by the European harmonisation programme include:
- First company law directive: the validity of company transactions and the eventual abolition of the *ultra vires* doctrine described in chapter 5;
 - Second: the raising and maintenance of capital (chapters 7 and 8);
 - Third: mergers of public companies by transfer of assets;
 - Fourth, seventh and eighth: set out requirements for company accounts and audit;
 - Sixth: demergers of public companies;
 - Tenth: cross-border mergers;
 - Eleventh: branches of certain kinds of company;
 - Twelfth: requires member states to allow single member private limited companies;
 - Thirteenth: company takeovers (chapter 15).

1.3 Case law

1. The importance of the influence of the courts in the development of company law is seen in a number of ways:
- interpretation of the law;
 - gap filling – where the legislation did not cover a particular point, particularly in the early development of the law, principles were established by the courts;
 - company supervision – the courts have an extensive supervisory role and the conduct of companies is frequently reviewed by the courts, for example, a public company must seek the authority of the court if it wishes to reduce its capital (see chapter 8);
 - an understanding of company law requires knowledge of other areas of law where the law has been developed through judicial precedent, for example the law of agency mentioned in chapter 5;
 - principles of equity, developed through cases heard by the Court of Chancery initially, are an important element of company law. Examples include the fiduciary duties owed by directors to their companies (chapter 12) and winding up on the just and equitable ground under s 122(i)(g) Insolvency Act 1985 (chapter 14).

2. Section 170(4) CA 2006 provides that existing case law will be taken into account in the application and interpretation of the general duties of directors, set out in sections 171 to 177 of the 2006 Act.

1.4 Codes

1. In addition to legislation and case law, self-regulatory codes play a part and will need to be considered when studying certain aspects of company law. The City Code on Takeovers and Mergers was the most important example until it was given statutory authority in May 2006 (now Part 28 CA 2006). This is discussed in chapter 15.
2. The UK Corporate Governance Code, which imposes an obligation on public companies to comply with the Code or explain why they have not done so, is considered in chapter 10. The Code on Market Conduct developed by the Financial Services Authority under the Financial Services and Markets Act 2000 seeks to limit market abuse and market manipulation (chapter 13).