



THE COMPANIES ACT

The Companies Act 2006 received Royal Assent on 8 November 2006, and has been introduced in a series of stages. 1 October 2009 sees the coming into force of the final 500 or so sections of the Act.

Many features of company law date back more than 100 years, and are not necessarily suitable for regulating modern companies. The Act acknowledges that a vast proportion of companies registered in the UK are small owner-managed private companies and introduces significant measures designed to modernise and simplify company law and thereby reduce the regulatory burden.

The main features of the final set of changes are detailed below.



NEW COMPANY FORMATION

From 1 October 2009 the documentation required for forming a new company will be very different.

The Memorandum of Association will be a short document, serving the limited purpose of evidencing the intention of each subscriber to form a company and become a member of that company. Companies will no longer be required to specify their objects, and the concept of authorised share capital will be abolished.

New Model Articles will be introduced. There will be three types, as follows:

- Private company limited by shares
- Private company limited by guarantee
- Public limited company

They are written in plain English and are shorter and simpler than 'Table A' (which has been around in various forms for the last 150 years). In practice, companies will be formed using either Model Articles, Model Articles with amended provisions, or bespoke Articles.

The Statement of Capital is a new document required as part of the formation documentation. It is a 'snapshot' of a limited company's issued share capital at a given time. It will need to be provided in various other circumstances, including as part of the application to incorporate and with each annual return made up on or after 1 October 2009.

EXISTING COMPANIES

Companies formed before 1 October 2009 will have constitutions which were designed under 'old' law, so there will be a need for *transitional provisions*.

For instance, provisions contained in their memorandum which go beyond the newly required limited information (such as objects clauses and authorised share capital) will

automatically be regarded as provisions of their Articles of Association.

Where the Articles contain matters which are not required under the specific provisions of the Companies Act 2006, the company may consider them to be unduly restrictive. For example they may cover matters such as rules about annual general meetings and proxies, company secretary, extraordinary resolutions and the chairman's casting vote.

Companies would be well advised to examine their Memorandum and Articles of Association with a view to adopting the new Model Articles, or to changing some of their current provisions. Changes to Articles should be made by a special resolution, requiring a majority of 75% of the voting rights of those eligible to vote. Special resolutions can be passed by written resolution, but a copy should be filed at Companies House within 15 days of its being passed.



DID YOU KNOW?

At more than 700 pages in length, the Companies Act 2006 is the longest Act ever to be passed by Parliament. One of the reasons for this length is that the Act replaces the majority of existing companies legislation, in particular the Companies Acts 1985 and 1989.

THE COMPANIES ACT 2006: SOME KEY CHANGES

1 January 2007

- Companies are required to disclose company details on all order forms, websites and relevant electronic documents

20 January 2007

- EU Directive enabling companies to make greater use of electronic communications

6 April 2007

- Removal of the maximum age limit (previously 70) for directors of public limited companies, and directors no longer need to disclose share dealings to the company
- Removal of the statutory annual report by the Secretary of State to Parliament
- New provisions relating to fees payable to the Registrar of Companies
- Implementation of the Takeovers Directive

1 October 2007

- The Companies Act sets out directors' responsibilities to their companies
- Annual General Meetings become optional for private companies

6 April 2008

- Period for filing accounts shortened from ten months to nine months for private companies and from seven months to six months for public limited companies

1 October 2008

- Companies allowed to give financial assistance for purchase of their shares
- Duty of directors to avoid conflicts of interest
- Companies must have at least one director who is a 'natural person'
- Nobody under the age of 16 may be a director
- The right to challenge 'opportunistic registration' of company names

- Company secretary becomes an optional appointment for private companies
- Shareholders may agree a limitation of auditors' liability

1 February 2009

- Increased penalties for the late filing of accounts

1 October 2009

- A simpler method of forming and administering new companies
- Concept of authorised share capital is abolished
- Directors may file a 'service' address rather than a residential address
- The Registrar of Companies is given new powers

DIRECTORS' SERVICE ADDRESSES

Directors (and company secretaries where applicable) of both existing and new companies will have the right to set out a service address rather than their usual residential address. The service address may be the company's registered office.

Individual companies will have to maintain two registers of directors – one containing, amongst other things, a service address for each director, and a further register containing the residential address of each director (protected information).

Home addresses will not be put on public record by the Registrar of companies after 30 September 2009. Companies House will still hold a register of residential addresses, but access will be very strictly limited (eg liquidators, the police, HM Revenue and Customs and credit reference agencies). If no action is taken, the residential address will automatically become the service address until the information is provided in the next annual return.

Only shareholders of traded public companies will be required to provide any address to Companies House.

REGISTRAR'S POWERS

The Registrar of companies will be given a range of new powers. These include powers to decide on the form and manner in which companies must deliver documents, what is needed for a document to be properly delivered, provision of electronic delivery for certain documents, and amendments to the register.

Draft forms and guidance are available on the Companies House website (www.companieshouse.gov.uk). They are subject to change up to 1 October 2009.

STRIKING OFF

The existing procedures will be carried over in a similar form. However, there will be a new simplified *administrative restoration procedure* for companies struck off by Registrar's action. Whatever the route of dissolution, the time limit for application to restore will be six years (currently two years for liquidation, 20 years for striking off).



This is an abbreviated summary of what is a complex piece of legislation. Please contact us for further information.

We have expertise in all areas of running a business, and we would be delighted to assist you.

This newsletter is for guidance only, and professional advice should be obtained before acting on any information contained herein. Neither the publishers nor the distributors can accept any responsibility for loss occasioned to any person as a result of action taken or refrained from in consequence of the contents of this publication.