

Legal Updates & News

Legal Updates

UK Companies Act 2006: Final Changes Coming into Force on 1 October 2009

September 2009

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Summary of Key Changes Coming into Force on 1 October 2009

- The objects of companies incorporated after 1 October 2009 are unrestricted unless expressly restricted by the articles. The objects of companies incorporated prior to 1 October 2009 will be deemed to be included in its articles of association but can be amended or removed by special resolution.
- The concept of authorised share capital has been abolished.
- The Companies Act 2006 (“**CA 2006**”) introduces the concept of “model form” articles rather than Table A articles. Whilst companies will still be able to adopt Table A articles after 1 October 2009 we anticipate that most companies will want to take advantage of the new “model form” articles.
- Companies House forms relating to company filings have changed. The new forms must be used for transactions taking place from 1 October 2009 onwards. Filings made after this date on the old forms will be rejected.
- A company may alter its name other than by way of a special resolution if its articles provide for this.

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Summary of Key Changes Already in Force

- Private companies no longer need a company secretary.
- Private companies no longer required to hold annual general meetings (“**AGMs**”) or to lay their accounts before their members in general meeting.
- A private company may now give 14 days’ notice of a general meeting provided its articles so permit.
- Public companies must give 21 days’ notice of an AGM but may give 14 days’ notice for all other general meetings whether or not a special resolution is proposed. In order for Official List public companies to take advantage of the reduced 14-day notice period for general meetings, they will need to pass a special resolution of their shareholders approving this, which must be renewed

at each AGM and is subject to a requirement that proxy voting via a website be available to all shareholders.

- Directors may now approve conflicts of interest if the shareholders have given the directors this power in the articles of association.

What Action Should a Company Take Post 1 October 2009?

Existing companies should consider whether following 1 October 2009 they wish to take advantage of the following new provisions provided for by the CA 2006:

- Both private and public companies will want to consider how they will deal with the abolition of authorised share capital, and whether it is appropriate to maintain a limit on the number of shares that can be issued in the articles, or whether this restriction should be removed.
- Both private and public companies will want to consider whether they should retain, amend or remove the company's objects clause.
- Both private and public companies will want to consider the period of notice provided in their articles for general meetings. For Official List public companies to take advantage of the reduced 14-day notice period for general meetings, they will need to pass a special resolution of their shareholders approving this, which must be renewed at each AGM and is subject to a requirement that proxy voting via a website be available to all shareholders.
- Private companies incorporated under the CA 2006 with only one class of shares may wish to disapply the statutory assumption that the directors have an unfettered authority to allot shares in such a company.
- The inclusion of a mechanism for a change of company name other than by way of a special resolution (for example, by way of a simple resolution of the board).
- Both private and public companies will want to consider whether they update their articles to make explicit reference to some of the more modern provisions that are now available to companies such as how both shareholder and board meetings are held, how resolutions are passed at these meetings, the notice provisions associated with meetings and how directors' conflicts of interest are dealt with.

Detailed Discussion of Key Changes

1. Company's Memorandum and Objects Clause

The Companies Act 2006 provides that the memorandum of a company incorporated under the CA 2006 only needs to record the name of the initial subscribers and the numbers of shares each subscriber has agreed to take. The CA 2006 also provides that unless a company's articles of association provide otherwise the company's objects are unrestricted.

For companies existing as at 1 October 2009 the objects clause and all other provisions of a company's memorandum will be deemed to form part of the articles of association. The company can amend or remove its objects clause by special resolution.

2. Authorised Share Capital

The concept of authorised share capital has been abolished. There is no longer a requirement for a company incorporated under the CA 2006 to include an authorised share capital in its constitution and directors may increase share capital simply by allotting new shares. The articles of association may however contain a limit on the number of shares which may be allotted.

For existing companies the authorised share capital currently stated in the company's memorandum will

be deemed to be included as a provision in the company's articles of association limiting the number of shares the directors can issue. This may be removed or amended by ordinary resolution.

3. Allotment of Shares and Pre-Emption

Private Limited Companies with One Class of Shares

The directors of private limited companies incorporated under the CA 2006 with only one class of shares are now generally authorised under the CA 2006 to allot shares of that class without the need for any sort of shareholder approval unless this right is prohibited or restricted by the articles. We envisage that most companies incorporated under the CA 2006 with a single class of shares will want to restrict, or in some cases totally prohibit, this otherwise unfettered ability of the directors to allot shares without a specific shareholder authority, especially if the company also wishes to generally disapply statutory pre-emption in its articles of association.

Companies with More Than One Class of Shares

For companies with more than one class of shares the directors of the company may exercise the power to allot shares in the company if they are authorised to do so in the company's articles or by way of an ordinary resolution. The abolition of authorised share capital means that there is now no limit on the number of shares directors are able to allot. However, a provision in the company's articles or ordinary resolution granting authority to allot must still contain a statement as to the maximum number of shares that may be allotted pursuant to that authority and the period of time to which it relates (not to exceed 5 years). Where the directors of a company have a general authority to allot, a company can disapply statutory pre-emption in either its articles or by way of a special resolution.

4. Articles of Association

Companies incorporated under the CA 2006 will have a choice between 3 different types of articles of association:

- adopting the "model form" articles as provided for by the 2006 Act;
- adopting the "model form" articles with amendment; or
- adopting entirely bespoke articles.

Having reviewed the model articles at length, Morrison & Foerster is of the view that most newly incorporated companies will want to adopt the model articles with fairly significant amendments. This will be especially so for private equity-backed companies, public companies or joint venture companies. Consequently we are suggesting to our clients that they adopt a bespoke set of articles which incorporate both the model articles and any bespoke provisions relevant for the particular company. This approach has the added advantage of meaning that all of the rules governing the company are in one document and consequently reference back to the model form will not be necessary when consulting the company's articles of association on various issues.

5. Directors

All companies must now have at least one natural person as a director. The new minimum age for a director is 16.

After 1 October directors will be able to provide Companies House with a "service address" as well as their residential address. The service address will be publicly available, but the director's residential address will no longer be publicly available. However, Companies House has the power to provide a director's residential address to public authorities and credit reference agencies. Many directors who have concerns about privacy may wish to take advantage of this new provision.

6. New Forms

There are approximately 200 forms required under the 2006 Act and as of 1 October 2009 companies will need to make their filings using these new forms in respect of transactions effected on or after that date.

Some are revised versions of existing forms and some are completely new, such as the Statement of Capital form which must now be filed with every annual return and new allotment of shares. If you make a filing under an old form, it will be rejected. The changes to the forms required as a result of the 2006 Act are too extensive to be properly covered by this note. If you have any questions on form filings, please do not hesitate to contact us.