

Companies Act 2006

m u n d a y s

Changes from 1 October 2009

This update focuses on the key provisions of the Companies Act 2006 (the "2006 Act") which take effect on 1 October 2009.

Memorandum of Association

- Private companies limited by shares formed after 1 October 2009 (New Companies") will be registered with a short form memorandum of association.
- The new style memorandum will contain simply a statement by each subscriber that they wish to form a company; that they agree to be members and take at least one share each. The memorandum will now be of historical significance.
- Existing companies will not be required to update their memoranda as the additional information which is not included in the new form memorandum will be deemed part of the company's articles of association.
- The 2006 Act allows a company to have unrestricted objects and many companies may want to take advantage of this.
- Companies will no longer be able to include "entrenched" provisions in their memorandum of association. If a New Company wishes to include an entrenched provision in its articles it will need to provide for these either on incorporation or, by agreement of all the members of the company.

Companies House

All Companies House forms will be replaced by new forms with new names. Companies House has also expanded its online capabilities and web filing services. For further details of form changes and online/same day services please contact Teresa Stansbury (teresa.stansbury@mundays.co.uk) our company secretarial administrator.

Articles of Association

- Every company is required by law to have articles. The articles form a statutory contract between a company and its members.
- New model articles replace Table A as the prescribed form of default articles. The model articles are intended to reflect updated company law, avoid archaic language and not duplicate the operative provisions of the 2006 Act.
- Existing companies whose articles follow Table A or which have filed bespoke articles will not automatically be able to apply model articles.
- An existing company will be bound by its current articles unless these are inconsistent with the 2006 Act changes which have mandatory application.
- The current articles of existing companies may not reflect the terminology or take advantage of the relaxations in the 2006 Act and may require updating.
- Arrangement such as shareholders' agreements and joint venture agreements may need alteration in light of the 2006 Act.

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Change of Company Name

- Companies are now permitted to alter their articles to allow for the company to change its name by following a specified procedure. This means that a company could change its name by a board decision.
- A change of name will still require registration at Companies House.

Directors

- Directors must now provide Companies House with a service address along with their residential address. The residential address will not be made available to the public.
- A service address is not permitted to be a post office box or a DX address but may be the registered office of the company.
- In limited circumstances applications to Companies House for disclosure of a director's residential address will be possible to public bodies and credit reference agencies.
- Directors' residential addresses which are at present held at Companies House will be used as their default service addresses.
- Any historical documentation at Companies House containing a director's residential address will not be removed.
- Both public and private companies are required to have at least one natural person as a director and a director cannot be under 16 years old.

Authorised Share Capital

- Companies are no longer required to have an authorised share capital.
- If the articles of existing companies refer to the authorised capital, there will be deemed to be a restriction on the number of shares that a company may issue.
- Existing companies which wish to limit the number of shares that can be allotted will not need to alter their articles. Those companies which want to take advantage of the new flexibility may either adopt new articles or pass an ordinary resolution to remove the authorised share capital.
- The model articles do not contain any reference to an authorised or nominal share capital.

Allotment of Shares

- Private companies with one class of shares may now allot shares without prior shareholder authority, unless their articles specifically state that authority is required.
- Existing private companies with one class of shares whose articles state authority is required may pass an ordinary resolution to enable directors to allot shares without prior member authority.
- Companies which already have authority in their articles or which have already passed the appropriate resolution may allot shares under that authority.
- Private companies with more than one class of share and public companies will still require shareholder authority to allot shares. Any such authority must be limited to 5 years and must state the number of shares to which it applies.
- Any issue of shares must be registered as soon as practicable and in any event within two months.

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Register of Members

- Non members of a company may request to view the register of members for a reasonable fee. Members may still view the register free of charge.
- If the company is a single member company the register must include a statement to that effect.
- A company will no longer be permitted to close its register of members for inspection for up to 30 days a year.

Annual Return

- Companies may now file their annual return electronically.
- The annual return will contain a statement of capital setting out information about the shareholdings of the company including voting rights.
- Since the register of members is no longer required now to be kept at the registered office of the company, the annual return should state where the register of members is kept, if not at the registered office.
- The residential addresses of a private company's members are no longer required to be disclosed in the annual return.

Share Buybacks

- Companies will no longer require express authority in the articles to buy and cancel their own shares.
- Companies considering a buyback should check their articles to ensure that a share buyback is not specifically prohibited.
- A buyback will be prohibited if a company would be left with only either redeemable shares or treasury shares.
- Directors will no longer be required to make a statutory declaration as to the company's financial position but will instead be required to make a "director's statement" in accordance with the 2006 Act.
- Directors are now able to carry out a buyback 5 years from the date of the shareholders' resolution approving the buyback. The previous maximum duration was 18 months.

Registration of Company Charges

- Security given by a company must be registered at Companies House with 21 days of its creation.
- The current practice of a company incorporated outside Great Britain but with an established place of business in England and Wales notifying Companies House of a charge it has created - a "Slavenburg" filing, has not been restated in the 2006 Act.
- Overseas companies may now only register a charge when they have registered with Companies House in the UK.

Registration at Companies House by an overseas company is required when it has set up either a branch or a "place of business" in the UK within 1 month of setting up

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Dissolution and Restoration to the Register

- The procedure for striking off a company from the register of companies by way of voluntary dissolution (as opposed to formal liquidation) has been extended so as to be available to public companies.
- In certain circumstances applications to restore a company to the register under the 2006 Act may now be submitted without an application first to court, simplifying the procedure significantly.
- Applications to restore a register must be made within 6 years of dissolution.

What to do next

The 2006 Act does not require existing companies to make any compulsory changes to their constitutional documents.

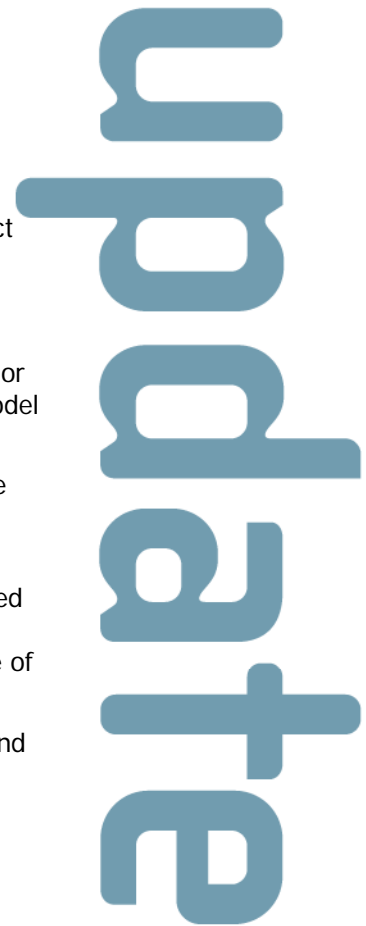
However, companies may wish to take advantage of the benefits of the 2006 Act and avoid the current burdens existing by the previous legislation.

Decisions will need to be taken as to whether to continue with Table A (with desirable amendments), adopt the model articles (with or without amendment) or move to tailor made articles with provisions draw from both Table A and the model articles.

New companies will need to consider which provisions of the old regime and the 2006 model articles are most appropriate when registering their constitutional documents.

Procedures in respect of many areas of company administration may have altered (such as notice periods for general meetings). Mundays can ensure that those involved in the management of companies are aware of the changes and advise of new procedures.

If you require specific help and advice tailored to your company's constitution and future requirements, or for further information, please contact Val Toon on the details below or your usual Mundays contact.



For more information please contact

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