

# UK Legal Update

## The Companies Act 2006 - Final Implementation Date 1 October 2009

September 2009

### Briefing Note

The final provisions of the UK Companies Act 2006 (**2006 Act**) come into force on 1 October 2009, and the UK Companies Act 1985 will be repealed save for a few minor sections. This alert gives a summary of the key changes coming into force on the final implementation date this week and highlights actions which could be taken by your business to take advantage of the new regime under the 2006 Act.

#### Memorandum of association – limited significance

The memorandum will now comprise a single document simply stating the subscribers' intention to form a company and subscribe for at least one share in it. The memorandum will be an incorporation document only and will play no part in the company's governance after incorporation. Companies incorporated on or after 1 October 2009 will have unrestricted objects.

For existing companies, information in their memoranda going beyond the limited details needed on incorporation (eg objects clause and statement of authorised capital) will now form part of their articles of association.

Existing companies may wish to delete these provisions, removing current constraints on the company's activities. This can be done by special resolution of the members.

#### Articles of association - new default model articles

The 'new model articles' will apply by default to companies incorporated on or after 1 October 2009 (unless bespoke articles are filed on incorporation), and will take the place of Table A. Existing companies do not need to amend their articles, but may wish to do so to take advantage of the simplified, more small business-friendly new regime under the 2006 Act.

Table A will still be used by existing companies that adopted it.

#### Share capital

##### **Authorised share capital - no longer required**

From 1 October 2009, both private and public companies will not be required to have an authorised share capital.

Existing companies, however, will still be restricted by the statement of authorised share capital in their memoranda of association (which will now form part of their articles) unless that provision is deleted.

##### **Allotment of shares**

Directors of private companies with only one class of shares will be able to allot shares of that class without shareholder approval, unless prohibited from doing so by their articles. Existing companies will need shareholder approval or an amendment to their articles if they wish to benefit from this new provision.

This relaxation of the rules is not available to public companies or private companies with more than one class of shares.

##### **Purchase of own shares and redenomination**

From 1 October 2009, private companies will no longer need specific authorisation in their articles of association to purchase shares out of capital.

The 2006 Act allows a company to convert shares denominated in one currency into another currency by ordinary resolution.

### **Statement of capital**

Where a change of share capital has an effect on the number of a company's shares in issue, the nominal value of those shares or the amount of paid up capital, the company will now be required to file a statement of capital with Companies House (eg after a share issue or share buy-back).

This will mean that the information on a company's share capital held by Companies House will be up to date at any given time.

### **Change of name**

Under the 2006 Act, a company will now be able to change its name either by special resolution or by a different procedure set out in its articles (eg by board resolution).

### **Registers - protection of directors' privacy**

Directors can now provide Companies House with a service address, rather than only their residential address. Although a residential address must still be filed, it will no longer be on the company's public register, and will only be available to certain third parties.

Directors of existing companies can change their details on the Companies Register, and unless they do so, the address currently on record will remain their service address.

Companies will be required to maintain a confidential register of directors' residential addresses as well as a separate register of directors' service addresses.

### **Conclusion**

Directors of both private and public companies should consider what, if any, changes should be made to their constitutional documents and procedures to take advantage of the deregulatory provisions of the 2006 Act and to ensure full compliance.

## **More information and London contacts**

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