

## *Companies Act 2006: October 2009 changes*



On 1 October 2009, those sections of the Companies Act 2006 (the "**2006 Act**") that have not yet been implemented will come into force.

The purpose of this briefing note is to summarise the key changes that will come into effect on that date. The changes relate principally to constitutional matters and those provisions relating to share capital.

### **Constitutional**

#### **Simplification of the memorandum**

The memorandum of association will have a significantly reduced role under the 2006 Act. For a new company incorporated on or after 1 October 2009, the memorandum will be a simple document in which each subscriber agrees to form a company and to take at least one share in that company. Following incorporation, this document will have no continuing constitutional relevance.

For an existing company, any provisions that are contained in that company's memorandum immediately prior to 1 October 2009, which are not provisions of the kind that will be contained in the "new-style" memorandum, will be treated as provisions of that company's articles of association from 1 October 2009.

The provisions that will be imported from the memorandum into the articles of association in this way will be the statements regarding: (i) the company's objects; (ii) the company's name; (iii) where the registered office is situated; (iv) status of the members' liability; and (v) the company's share capital (and nominal value of each share) on registration. Any bespoke provisions that a company may have had in its memorandum will also be imported into the company's articles of association at that point.

An existing company may choose to remove certain of these provisions either with effect from or at any point after 1 October.

#### **The company's articles of association**

If an existing company receives a request from a member to provide a copy of its constitution on or after 1 October 2009, it can either (i) provide a copy of its pre-1 October 2009 articles together with an extract of those provisions from its old-style memorandum that are deemed to be provisions of the articles; or (ii) provide a copy of its pre-1 October 2009 Articles together with a complete copy of its old-style memorandum, with those provisions that have been imported provisions indicated appropriately.

#### **Objects**

From 1 October 2009, the general position will be that a company's objects will be unrestricted unless its articles include a specific restriction. If an existing company wants to benefit from this new regime then it will need to delete the objects clause from its articles of association after it has been imported on 1 October 2009.

#### **Model Articles**

New forms of Model Articles of Association will apply by default to companies incorporated under the 2006 Act on and after 1 October 2009, save to the extent that they are excluded or modified (whether implicitly or explicitly). By way of departure from the position under the Companies Act 1985, the new Model Articles regulations prescribe forms of Model Articles for private companies limited by shares, for private companies limited by guarantee and for public companies.

The form of Model Articles for private companies limited by shares is a simplified and shortened form of Table A. The drafting approach taken for these regulations assumes

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that the majority of small private companies, whose generic needs the default articles are seeking to address, will have a simple capital structure, will only issue shares on a fully paid basis in certificated form and will not require provision for alternate directors. The assumption is that where a private company has more complex bespoke needs, it will devise its own articles to deal with these specific requirements or will seek to adopt the relevant provisions of the Model Articles for public companies.

Table A will remain in force, with the consequence that existing companies with Table A-based articles will not need to adopt new articles.

## **Share Capital**

### **Authorised share capital**

With effect from 1 October 2009, the concept of authorised share capital will cease to exist.

For existing companies that were incorporated prior to 1 October, the amount of their authorised share capital immediately before 1 October 2009 will be treated on and after 1 October 2009 as a provision of the company's articles imposing a restriction on the maximum number of shares that may be allotted by that company.

If an existing company does not want to have such a limit, they may specifically amend or remove this imported provision by means of an ordinary resolution.

For companies incorporated on or after 1 October 2009, the shareholders can still choose to impose a restriction on a company as regards the number of shares that it may allot and issue by including such a restriction in the company's articles of association.

### **Statements of capital**

With effect from 1 October 2009, where an alteration of share capital affects the amount of shares in issue, the nominal value of such shares or the amount paid up in respect of such shares, companies will be required to file a statement of capital with the Registrar of Companies. By way of example, this requirement will be triggered in the event of an issue of shares or a buy-back of shares. This will result in an up-to-date snapshot of the company's share capital being available at Companies House. The statement of capital forms part of the requisite forms that need to be filed at Companies House following the various alterations of share capital.

### **Redenomination of shares**

By way of contrast to the position under the Companies Act 1985, the 2006 Act permits a company to convert shares denominated in one currency into another currency by means of an ordinary resolution.

## **General**

### **Disclosure of directors' addresses**

With effect from 1 October 2009, the Companies Act 2006 will introduce a new regime for the disclosure of directors' addresses.

Companies will have to maintain two separate registers of directors: (i) a statutory register of directors, which will contain the requisite information relating to directors including a service address, which will be available on the register of companies as a matter of public record; and (ii) a separate statutory register of directors' residential addresses, the details of which as a general principle, will not be a matter of public record.

### **Changing a company's name**

The 2006 Act will allow a company to change its name both by means of a special resolution (as has been the case under the 1985 Act) and also by any other means provided for by its articles. By way of example, this would permit shareholders to delegate the ability to change a company's name to a majority of its directors, if it were considered appropriate to do so.

For further information on any of these matters, please contact your usual Travers Smith contact.

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