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Companies Act 2006: The practical changes for 2009

The Companies Act 2006 is now in the final stages of its epic journey to implementation, with the last clauses due to come into effect from 1 October 2009. The changes it has brought about have been wide ranging, affecting both existing companies and those due to be formed from that date.

In this briefing we will summarise the key changes directors need to be aware of in forming and running a limited company and outline the key decisions that an existing company will need to take to operate efficiently in the new regime. If you would like to discuss how any of the changes might affect you or your company in more detail please contact us.



The overall objectives

The government's overall objectives for the new legislation were to simplify and modernise

company law so that it

better meets today's business needs and provides flexibility for the future.

The Act itself has been written in simplified language, with a particular focus on small companies.

Changes from October 2009

Forming a company

The formation and administration of companies will become simpler from 1 October 2009. The company Memorandum will become a formal document recording only very limited information, for example, the names of the people registering the company. Companies will no longer be required to specify their objects and the concept of authorised share capital will be abolished. For newly formed companies (and existing ones which amend their constitution accordingly) the Articles alone will be

the continuing constitutional document, containing the minimum key rules on the internal workings of the company. Private companies will have separate, simple Model Articles that will better reflect the way they operate.

Location of the company's statutory records

A company may keep its records for public inspection either at the company's registered office or at a new single alternative inspection location (SAIL). If a company wishes to take advantage of SAIL it must inform Companies House after 1 October 2009 of any alternative site (only one is permitted) and of the records it intends to keep there.

Companies House statutory forms

From 1 October 2009 the 200+ forms currently issued by Companies House will be replaced by a new series, grouped by the type of information to be submitted. Draft versions of these forms are already available on the Companies House website, but cannot be used before 1 October 2009.

- The annual return will become form AR01. From 1 October 2009, directors will not only have to supply their usual residential address to Companies House but also a service address. However, it will be the service address which is on the public

record with the residential address being protected information. An example of an appropriate service address could be the company's registered office.

If a director chooses to supply their residential address as a service address the fact that the two are the same would not be apparent from public record.

From 1 October 2009 the Annual Return should only confirm information already held by Companies House. You cannot use the return to give notice of changes to:

- the company officers;
- the registered office address;
- the company type; or
- information relating to the company records.

If the Registrar receives an Annual Return which is inconsistent with the information held on the record an inconsistency notice will be issued. The company has 21 days to respond before the notice is put onto the public record.

- Changes to directors, secretaries and their particulars will be submitted on AP01 (appointment), TM01 (terminations), or CH01 (change of details.)

- A change of accounting reference date will be on form AA01 and a change of registered office on form AD01.

The forms to be used are governed by the date when the change takes effect. If a new director is appointed on 30 September 2009 the old form 288a must be used, even if the notice is given later. If an appointment is from 1 October 2009 then AP01 must be submitted.

The old forms will continue to be available on the web site for the present.

Decisions for existing companies

All companies are affected by the new forms, but there are some sections of the new legislation already in force that existing companies may well need to opt into, depending on their current Memorandum and Articles.

- **The abolition of the company secretary and the AGM**

The new Act allows private companies to opt out of the need for a company secretary and has abolished the requirements to hold an Annual General Meeting (AGM). A Public limited company (Plc) still needs to hold one.) The company's existing Articles may contain specific requirements for certain tasks to be carried out by a company secretary or at the AGM. If a company wishes to take advantage of the simplifications in the Act they will need either to change these clauses in their existing Articles or to adopt the new Model Articles.

- **Company Resolutions**

Some existing companies may have provisions in their Articles which specify when meetings should be held, the quorum are required for various resolutions and how meetings must be conducted. To take advantage of the ability of companies to pass written resolutions, they may need to make appropriate changes to their Articles.

- **The abolition of authorised share capital**

This clause in the Memorandum of existing companies will be automatically transferred to their Articles from 1 October 2009. An existing company wishing to issue capital in excess of their existing authorised share capital will need to pass a special resolution increasing the authorised capital. Alternatively it may remove this limit from its Articles.

- **The abolition of the objects clause**

New companies will be formed with unlimited objects; for existing companies this represents another clause in the Memorandum that will be automatically transferred to the Articles. The company may wish to "entrench" some clauses – eg Charities may wish to continue specifying how their funds may be distributed, other companies may wish to take advantage of this relaxation to eliminate their objects clause.

Changes to the Articles to adopt some or all of the new rules requires a special resolution either at a general meeting or by written resolution.

A special resolution needs a majority of 75% of those eligible to vote and a copy of the resolution together with a copy of the fully revised articles must be filed at Companies House within 5 days. Previously it was the Registrar's custom to accept the filing of the resolution and the new article alone.

A penalty of up to £200 applies if this is not met.

If your company has been incorporated as a Plc you will not be able to take advantage of a number of the simplifications in the Act. Changing your company's status may be relatively simple under the Act. We will be happy to discuss this with you.

And of continuing importance for all companies.....

- **Shorter filing deadlines and higher penalties**

The period available to file accounts at Companies House has been reduced under the new Act:

| Filing Deadline | Old | New |
|-------------------------------|--|-----|
| | months from the end of the accounting period | |
| Private limited company (Ltd) | 10 | 9 |
| Public limited company (Plc) | 7 | 6 |

In addition, the penalties associated with late filing of accounts were increased from 1 February 2009, with the minimum penalty for accounts less than a month late now £150 (£750 for a Plc) rising to £1,500 where accounts are over six months late (£7,500 for Plcs).

Comment

These sums are already substantial. If accounts are late for a second year running then penalties are doubled in size. The penalties go straight to the Treasury and Companies House has virtually no discretion to remit or reduce them!

- **A re-statement of director's duties and safe harbour from liability**

There is now a formal, statutory code of directors' general duties to the company. The Act requires each director to act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole.

In performing the above duty, the Act requires that directors give some consideration as to how their decisions affect the wider interests of, amongst others, their employees, the community and their suppliers.

As reporting requirements increase for some companies, the Act gives directors a 'safe harbour' that will restrict their civil liability in respect of material omissions from, or statements made in, directors' reports.

- **Other simplifications**

The rules regarding capital maintenance and share capital provisions were complex and the new Act has simplified these by removing unnecessary and burdensome requirements for private companies. In addition, private companies are no longer prohibited from giving financial assistance for the purchase of their own shares, provided they are not subsidiaries of public companies.

