



Newsletter 001
17th March 2011

The implementation of the Companies Act 2006 was fully completed on 1 October 2009. The full act of parliament is over 700 pages long, so I have attempted here to try to highlight some of the key points / changes for quick reference. Hope you find it useful!

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1. Memorandum and Articles of Association

The Companies Act 2006 abolished the need for an objects clause within the Memorandum of Association. Additionally the liability clause, situation clause and capital clauses were also abolished. It is permissible to insert an objects clause within the Articles of Association but if companies do register objects, it is irrelevant for the validity of contracts with outside parties. Articles for new companies will include liabilities clause previously found in the memorandum of association.

The current Memorandum of Association is basically now a statement that the subscribers wish to form a company under the 2006 Act, have agreed to become members and, in the case of a company that is to have a share capital, to take at least one share each. It has also become an historic document as it can only be filed once on incorporation of a limited company. All or any changes to the company structure are now totally covered by the Articles of Association (which can be amended and updated without restriction).

2. Companies now have 'Unrestricted' Objects

Companies registered under the Companies Act 2006 have unrestricted objects, however they may choose to restrict them in their articles by passing a special resolution and completing the 'statement of objects' on form CC04. The amendment to the objects is not effective until the form has been registered by

Companies House. The company must also file a copy of the revised articles within 15 days of the date the resolution was passed or made.

Companies registered under the 1985 or earlier Companies Acts can also amend their articles to take advantage of these provisions. Although their objects are listed in their memorandum these will be deemed to form part of the articles and they are required to send a copy of the resolution and a copy of the amended articles or the memorandum if the company has amended its memorandum.

3. Authorised Share Capital

Previously legislation provided for companies to have an 'authorised share capital'. This requirement was abolished from 1 October 2009, so that there is no longer a statutory limit on the number of shares that may be issued.

4. Companies incorporated prior to Companies Act 2006

Changes in the law following the Companies Act 2006 will not oblige any existing companies to do anything. However, companies, especially private companies that wish to take advantage of the benefits of new provisions in the Act will need to act accordingly. For example, if a private company wishes to have no AGM or no secretary as the default, then it will need to amend its constitution.

5. A private company is no longer required to have a company secretary

The Companies Act 2006 provides that private companies no longer are required to have a company secretary. However, if a private company decides to appoint a company secretary, then the authority of a private company secretary will be the same as that of a public one. Therefore, the appointment of a company secretary to a private company must be notified to the registrar of companies and be recorded in the company's register of secretaries.

6. Directors Appointments

There are no changes to the process of appointing a director. In other words, the appointment of directors continues to be governed by the company's Articles and in the absence of any such provision, continues to be a matter for the company's shareholders.

To remove a director an ordinary resolution continues to be sufficient with Special Notice and a director remains entitled to any compensation or damages payable to him in respect of the termination of his appointment.

There is however a slight change in the resolution must be passed at a shareholders' meeting and not by way of written resolution. This is to protect the director's right to protest against his removal by speaking at the meeting.

All companies are required to have at least one director who is a natural person (in other words, an individual). Before the 2006 Act came fully into force it was possible for all of a company's directors to be other companies. The new requirement is intended to ensure that every company will have at least one individual who can, if necessary, be held to account for the company's actions.

There is no requirement, however, that the natural person need be domiciled in the UK.

A director of a private company must be aged 16 years or older.

7. Directors Service Address

Directors are now able to have a "service" address as well as their real address. The service address will be a public record whereas the real/ residential address will only be made available to credit reference agencies and public bodies. From 1st October 2009 the current director's residential address will automatically become the service address and if you want to change that you will be able to do so online

Note: Vulnerable directors will be able to apply to the Registrar for their addresses not to be provided to credit reference agencies on the grounds that they are:

- at serious risk of violence or intimidation as a result of the activities of a company of which he is a director;
- or has been, employed by the police or security services;
- providing, or has provided, goods or services to the police or security services.

* If you would like to keep a directors residential address from being on the public record simply provide a Service Address (in addition to a private address) when making application for a company.

8. Simplified decision- making process

The decision-making process of the private companies has been simplified by removing the statutory requirement of holding AGM and making it easier to take decisions by written resolutions.

Under the 1985 Act, private companies could resolve to use the elective regime to dispense with some of the formalities such as holding AGM, laying accounts, etc. The Act sets the elective regime as a default position for the private companies and so for example no AGM will need to be held unless the company makes a positive decision to do so. It should be noted, however, members holding 10% of the voting rights can request a company to hold an AGM.

Previously, written resolutions required unanimous consent of the members. The Act provides that the normal rule for special and ordinary resolutions will apply to written resolutions; in other words, a simple or 75% majority will be suffice to pass a written resolution.

9. Share Issue

The Companies Act removes the need for shareholders' approval for allotment of shares and empowers the directors to allot shares as they see fit subject only to the pre-emption rights and on condition that the company will have only one class of shares after the proposed allotment.

10. Simplifying capital maintenance provisions

The Companies Act 2006 abolished prohibition on financial assistance for private companies purchasing their own shares and introduced a simpler mechanism for capital reductions. A private company may now avoid the necessity of going to the court by utilising a new procedure under which share capital can be reduced through a special resolution of the members supported by a solvency statement made by the directors.

* We are able to draft all resolutions, minutes and statements to effect a reduction in capital – Please contact us for details

11. Filing of Accounts

Company accounts need to be filed 9 months after the date of a company's year end for accounting periods starting on or after 6th April 2008. The time permitted before the Act was 10 months. Penalties for late filing of accounts have increased depending on how late the accounts reach the Registrar:

Length of delay (measured from the date the accounts are due)	Private Company	PLC
Not more than 1 month	£150	£750
More than 1 month but not more than 3 months	£375	£1500
More than 3 months but not more than 6 months	£750	£3000
More than 6 months	£1500	£7500

12. Company Registers

The company's registers can now be held at either the current registered office or at a single alternative inspection location which has the acronym SAIL – you may only have one SAIL address per company (as defined by the acronym...) and must notify companies house of any changes made.

13. Use of Company Name

From 1 January 2007, the Companies Act 1985 as amended required the company's name to appear legibly in:

all its business letters,
all its notices and other official publications,
on all its websites,
all bills of exchange, promissory notes, endorsements, cheques, orders for money or goods purporting to be signed by or on behalf of the company, and
all bills of parcels, invoices, receipts, and letters of credit.

In addition, the company's business letters, order forms and websites have to include fuller particulars, i.e.

the company's place of registration and the number with which it is registered, the address of its registered office, in the case of an investment company, the fact that it is such a company, and in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

14. New rules relating to proposed Company Names

Companies House will reject an application to incorporate a name that is identical to an existing name on the Companies Register or if it differs from another name in a trivial way, ie is effectively the "same as" an existing name. (Note: A name that is effectively the "same as" another's may still be permitted if the two companies will be part of the same group and if the existing company agrees to the other taking the proposed name.)

Examples of what will be disregarded or ignored when comparing names are:

words and expressions such as "biz", "co", "co uk", "co.uk", "com", "company", "UK", "United Kingdom", "Wales", "Cymru", "net", "GB", "Great Britain", "org.uk", "services", "international" ;

a blank space between or after a word, expression, character, sign or symbol; punctuation including a full stop, comma, colon, semi colon, hyphen, apostrophe, bracket, exclamation mark, question mark;

permitted characters "*", "=", "#", "%" and "+" if they are used as one of the first three characters in a name;

"s" at the end of a name;

"the" and "www" at the beginning of a name;

Additionally Companies House will treat certain words and expressions as if they were the same, for example, "and" and "&", "plus" and "+", "1" and "one", "6" and "six", "€" and "euro", "\$" and "dollar", "%" and "percent", "@" and "at",

For more information regarding the 'same as' please see 'The Company and Business Names (Miscellaneous Provisions) Regulations 2009 (SI2009/1085)'

* You can check on the availability of a proposed name from our web site

15. Forms

Lots of the companies house forms have been redesigned / renamed with much more logical names. Rather than being named after the section of the companies house act that describes them, they are named after their purpose. For example, the Annual Return is now Form AR01 rather than Form 363. The relevant law sections are now referred to within the body of the form.

* All updated forms are available to download from our web site

16. Statement of Capital

Companies must now complete a Statement of Capital when they are first registered, whenever share capital changes, and every year when they file their annual return. This is a snapshot of the companies share capital at a given point in time, and also gives details of voting and dividend rights for each share.