

Companies Act 2006: The final 'D' Day

Briefing note

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The final part of the Companies Act 2006 (the **Act**) comes into force on 1 October 2009. This briefing note highlights key new provisions and considers what they mean for directors and companies.

Privacy of directors' addresses

On 1 October 2009, provisions will come into force intended to protect the privacy of directors' home addresses.

A director will be entitled to provide a service address for the public record (e.g. the company's registered office) instead of his home address.

The home address will still be required by Companies House, but will remain confidential and will only be released to third parties in limited circumstances (e.g. to credit agencies or certain public authorities).

It should be noted, however, that addresses already provided to Companies House will still be publicly available (although there is a procedure under which directors can have their addresses removed, for example where they are at risk of violence).

Companies House

From 1 October 2009, there will be new forms to file with Companies House, which are available on its website at: www.companieshouse.gov.uk.

If an old form is filed after this date it will be rejected automatically by Companies House (unless it relates to an event which occurred before 1 October 2009).

Changes to memorandum and articles

The changes coming into force on 1 October 2009 do not oblige companies to change their existing constitutional documents.

However, we suggest that existing companies should consider updating their articles to:

- ensure that their objects are not restricted;
- avoid any inconsistency between the terminology and provisions of the articles and

those of the Act; and

- take advantage of new powers introduced by the Act.

Key changes affecting a company's constitution are set out below.

Memorandum of association

For companies incorporated on or after 1 October 2009, the memorandum of association will be a very brief statement setting out certain details of its incorporation.

For an existing company, the other provisions of its memorandum will be deemed to form part of its articles.

The company's existing objects will therefore be interpreted as setting out restrictions (rather than powers) in its articles.

We suggest existing companies should consider passing a special resolution deleting these



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restrictions from their articles, to avoid their objects being restricted inadvertently.

Model articles

New model articles have been published by the Government and will become the default articles for companies incorporated on or after 1 October 2009.

The model articles will not apply to existing companies unless adopted by them (whether in whole or in part).

We suggest that existing companies should consider reviewing their existing articles to ensure they are consistent with the Act and the new model articles.

Share capital

Companies will from 1 October 2009 no longer be required to have an authorised share capital, so when issuing shares, companies will not need to be concerned with the number of unissued shares available.

However, any provision in an existing company's memorandum

relating to authorised share capital will be treated as being part of its articles and will therefore continue to restrict the company until removed.

We suggest that existing companies should consider deleting these restrictions from their articles to enable directors to issue shares subject only to the authority that has been given to them by shareholders and pre-emption rights.

Issue of shares

With effect from 1 October 2009, directors of private companies with only one class of shares will be able to allot shares without the shareholder approval previously required, unless the company's articles restrict this.

We suggest that private companies with one class of shares should consider passing an ordinary resolution to take advantage of this relaxation.

Alteration of share capital

Companies will not, from 1 October 2009, need prior authorisation in their articles for:

- the purchase of their shares;
- the consolidation or sub-division of their shares; or
- reductions of share capital.

In addition, from 1 October 2009, private companies will no longer need prior authorisation in their articles for the issue of redeemable shares (although the directors can only determine the terms of redemption and payment if authorised by the articles or a shareholder resolution).

We suggest that if a private company wishes to give its directors power to determine the terms of redeemable shares, its articles should be amended and/or a members' resolution passed to reflect this.

Company incorporation

From 1 October 2009, any type of company can be formed by a single person (prior to this date, a public company is required to have at least two members).

However, the requirement for public companies to have at least two directors remains.

Your Contacts

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