



Oakwood Alert

Today's the Day!

Final implementation of the Companies Act 2006

1 October 2009

The final stage of implementation of the Companies Act 2006 (the **2006 Act**) has taken place today. Significant changes have been introduced, with effect from 1 October 2009, in a number of key areas affecting UK companies and there are various practical steps which companies should be considering to minimise their ongoing administrative burden.

If we can help you in relation to any of the issues discussed, or if you would like to talk through any of the issues in greater detail, please do give us a call. Contact details are provided below.

Company constitution

Most provisions of an existing company's memorandum are now deemed to form part of its articles (unless a resolution has already been passed to remove them) and the memorandum is of no continuing practical relevance.

The objects clause, for example, is deemed to form part of the articles and operates as a restriction on what a company may do. Likewise, the share capital clause is deemed to form part of the articles and operates as a cap on the number of shares a company may allot.

Most companies will want to think about passing a resolution to remove these provisions from their articles. This would mean that they have unrestricted objects, facilitating their dealings with banks and other third parties. It would also mean that there would be no limit on the number of shares the directors may allot.

New forms of model articles

There are new forms of model articles for both private and public companies. The new model articles are drafted in 'plain English' and are designed to be briefer and more straightforward than their predecessors in Tables A to F.

Existing companies' articles are not affected by the new forms of model articles unless they choose to amend their current articles to incorporate them. This may be a sensible time to review existing articles, not only to remove the objects and share capital clauses (as referred to above), but also to remove:

- any other provisions that are inconsistent with the 2006 Act or no longer necessary
- any out-of-date statutory references to the Companies Act 1985 (the **1985 Act**).

Deregulatory provisions

There are also certain deregulatory provisions in the 2006 Act which companies may want to consider taking advantage of, if they haven't already done so. They allow:

- shorter notice periods for general meetings
- private companies not to have to hold AGMs
- companies to use less formal procedures to change name - for instance by board resolution (rather than by shareholder resolution as previously required).

It is also worth bearing in mind that whenever a company sends a copy of its articles out to any person, or files a copy with the Registrar of Companies, the copy will need to have attached to it, either:

- a copy of the provisions of the memorandum that are now deemed to form part of the articles

- a copy of the memorandum, indicating which provisions are now deemed to form part of the articles.

Companies should consider how they are going to comply with these new requirements. Please let us know if you would like to discuss the options, which include passing a resolution to remove the unwanted provisions of the memorandum which will otherwise be deemed to form part of the articles.

Directors' addresses

Under the 2006 Act, directors are no longer required to make their residential addresses available on the public file. Instead, they can provide a service address (which can be the company's registered office), while their residential addresses are held separately on a secure part of the register to which access is restricted (to certain public authorities and credit reference agencies).

In certain circumstances, directors can prevent disclosure of their residential addresses to credit reference agencies, where they or their family members are considered to be at risk of violence or intimidation. Directors who previously had confidentiality orders in place will not currently have their residential addresses registered on the public file at Companies House in any event and are automatically given the additional protection from disclosure of their residential addresses to credit reference agencies.

The new provisions also make it possible for directors to apply for a residential address publicly available on any document filed between 1 January 2003 and 30 September 2009 to be removed. Directors who had confidentiality orders in place are entitled to have such addresses removed, although to achieve this, an application identifying all relevant documents on the filing history at Companies House would need to be made.

We would be delighted to assist you with this process.

Changes to the statutory registers

Changes also need to be made to companies' statutory registers to reflect the changes in the law relating to directors' addresses. A new register of directors' residential addresses needs to be maintained, in addition to the register of directors (where directors' service addresses will be registered).

There are various other changes to be made to the register of directors:

- it no longer needs to include details of directors' other directorships - although it may still be an idea to hold these details, to help in the process of monitoring and authorising possible conflict situations
- details of shadow directors are no longer required and any such details currently registered should be removed.

There is a new requirement to notify the Registrar of Companies where the register of directors is kept for public inspection and of any change to that place (unless it has always been kept at the company's registered office). For further information, see below in relation to "alternative inspection locations".

In general, existing companies do not need to amend their existing registers to reflect any of the additional information required until they make up their first annual return after 1 October.

Any filing of an individual director's details after 1 October need to include a service address to be placed on the public register and the director's usual residential address which will, of course, remain confidential (subject to the exceptions already referred to). Directors may choose to file service address details as soon as possible after 1 October, rather than waiting until a filing is required.

Oakwood's Blueprint company secretarial database has been upgraded with the latest release of the Blueprint software and caters for all of these changes.

Single Alternative Inspection Location (SAIL)

Under the 1985 Act, a company was required to keep its register of members at its registered office, unless it had appointed a third party to maintain the register, in which case it could be kept at that third party's office.

The 2006 Act has amended this requirement so that a company's register of members must be kept available for inspection at its registered office or at a 'single alternative inspection location' (or **SAIL**). It no longer matters whether the work of maintaining the register is carried out at the alternative inspection location or not.

A company is only allowed one alternative inspection location for all its statutory registers. So, for example, it cannot have one alternative location for its register of members and a different one for its registers of directors and secretaries.

If a company chooses to keep its registers at an alternative location, it must file two new forms:

- AD02 (notification of SAIL)
- AD03 (change of location of the company records to the SAIL).

The address of the SAIL would also need to be included in the company's subsequent annual returns.

Oakwood will, of course, provide a SAIL for all of its company secretarial clients and take care of the filings required.

Statements of capital

Companies are now required to prepare and file a statement of capital in various circumstances, including whenever there is an alteration of share capital and on filing the annual return. The statement of capital must include:

- the total number of shares of the company
- the aggregate nominal value of those shares
- the amount paid up and the amount (if any) unpaid on each share
- in relation to each class of shares:
 - prescribed particulars of the rights attaching to those shares
 - the total number of shares of that class
 - the aggregate nominal value of the shares of that class.

For companies with more than one class of share, these requirements are complex. Disclosure of the rights attaching to each class of share cannot be satisfied by simply cross-referring to the relevant provisions of the company's articles.

The requirements to disclose the amounts paid up and unpaid on different classes of share are potentially onerous, particularly where shares have been issued at a premium. Discussion is ongoing between ICSA and the Department of Business, Industry and Skills (**BIS**) concerning the practical difficulties which companies with long and complex share capital histories face in meeting these requirements.

ICSA Guidance

The latest development was the release of guidance by ICSA on 25 September 2009 which offers advice on how affected companies may best deal with the difficulties for the time being, although a more permanent solution may ultimately be required by means of amending legislation.

Companies should consider reviewing the articles of subsidiaries which have more than one class of share to establish whether those different classes are still required. If not, they may wish to consider simplifying the share capital structure, to make the process of complying with the statement of capital requirements more straightforward on an ongoing basis. We would be delighted to assist you with this review process.

To see the ICSA Guidance on Statement of Capital, please [click here](#).

Annual returns

In general, companies no longer have to disclose the addresses of their members in annual returns. The main exception is companies with securities admitted to trading on a regulated market, who are

required to disclose the names and addresses of members who held 5% or more of the issued shares of any one class of share at any time during the return period.

Additional changes

Other changes of note which have been introduced include:

- a simplified share allotment procedure for companies with only one class of shares, which, for existing companies, is subject to members having “opted in” to the regime
- a reduction in the statutory pre-emptive offer period to 14 days
- a simplified procedure for the re-denomination of a company’s shares into another currency
- re-statement of the voluntary strike off procedure, which is now also available to public companies
- a new administrative procedure by which companies can, in certain circumstances, be restored to the register without the need to go to court

If you would like advice or further information on any of the issues covered in this newsletter, please contact:

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