

Companies Act 2006 – October 2009 Implementation

An overview

Registrar's Powers

Part 35 of the Companies Act 2006 now gives the Registrar of Companies a range of powers. These include powers to decide on the form and manner in which companies must deliver documents, what is needed for a document to be properly delivered, provision of electronic delivery for certain documents, and amendments to the register.

Powers to amend the Register

Companies sometimes by mistake submit more information than they need, e.g. internal tax computations that do not form part of the statutory accounts. The Registrar now has extra powers to remove these.

Form Changes

There are in the region of 200 forms required by the Act, some are revised versions of existing forms and some are completely new. There will be changes to all Companies House forms if only to remove the number, which at present refers to the relevant section on the 1985 Companies Act. The new numbering system groups forms by their type, eg AA for accounts forms – AA01 = change of accounting reference date, replacing form 225.

Incorporation

To make it easier to set up and run a company there are a number of changes to the company incorporation process. The new system of incorporation will be preceded by a 'clearing period' to process any application made under the Companies Act 1985 that is received before 1st October 2009.

The new incorporation process will require an application to register a company (Form IN01) accompanied by a memorandum of association, the articles of association and the correct fee.

The memorandum of association is a much shorter document which will serve the limited purpose of providing evidence of the intention of each subscriber to form a company and become a member of that company. In the case of a company that is to have a share capital on formation, each member agrees to take at least one share.

There will be 3 types of articles: model articles, model articles with amended provisions and bespoke articles. Model Articles are included in schedules 1-3 of The Companies (Model Articles) Regulations 2008 and will replace Table A.

Companies incorporated on or after 1st October have to file a new document, a “statement of capital,” on incorporation. This will also need to be filed every time there is a change to a company’s share capital. The statement is a snapshot of the company’s issued share capital at a given time showing the total number of shares, the aggregate nominal value of each share, particular rights attached to each class of share, and the amount paid up on each share in respect of nominal value or share premium.

Authorised / nominal share capital will be discontinued on incorporation, which means that there will also no longer be a limit set out in the Memorandum on the number of shares that directors can issue. Currently a special resolution is required to increase the authorised capital if directors wish to issue shares above the limit in the memorandum. However shareholders can seek controls on the issue of shares by directors in the Articles.

The need for a solicitor to make a statutory declaration of compliance will be replaced with a statutory statement of compliance from the company - also designed to make the company incorporation process simpler. The statement may be made in paper or electronic form and need not be witnessed. It will be an offence to make a false statement of compliance.

Finally, there is a new provision enabling a single person to form not only private companies but also public companies.

Entrenched Provisions

Articles of association may contain provisions for entrenchment establishing restrictions on the conditions to amend certain provisions of the articles. These can be introduced on and after formation by the company or by order of a court or other authority.

Companies will also be required to file a notice to notify the Register of:

- the presence and removal of such provisions of entrenchment,
- when the company amends its articles and these contain provisions for entrenchment, and
- when the company’s constitution is amended by court order or by enactment.

Change of Name

Companies can change name by 4 methods:

- resolution,
- conditional resolution,
- resolution from directors,
- means provided in the company's articles.

Companies must notify the Registrar by completing a notice available for each method. This notice must be accompanied by the fee.

Company Name

The rules on "same as" will be stricter. Companies House will disregard a number of matters if they appear at the end of the name and they are preceded by a full stop including:

BIZ	EU	IMPORTS	ORG.UK
CO	EXPORTS	INTERNATIONAL	SERVICES
CO UK	GB	NET	UK
CO.UK	GREAT BRITAIN	NI	UNITED KINGDOM
COM	GROUP	NORTHERN IRELAND	WALES
COMPANY	HOLDINGS	ORG	
ALLFORION	CYNHEILIAID	GRWP	PRYDAIN FAWR
CWMNI	CYRDDAU	GWASANAETHAU	RHYNGWLADOL
CYM	DALIADAU	MEWNFORION	RYNGWLADOL
CYMRU	DU	PF	Y DEYRNAS UNEDIG

Directors' Service Addresses

Every director must provide Companies House with both their usual residential address, and for each directorship they hold, a service address. The service address will be on the public record and will be public information but the residential address will be protected information. A director can choose any address as the service address including the registered office address of the company. The address must be where documents can be delivered and an acknowledgement or receipt can be provided if required. The address cannot be a PO Box or a DX number. If the director chooses to use his residential address as the service address the fact that the two addresses are the same would not be apparent from the public record.

The residential address will only be available to prescribed regulatory authorities such as the Police and HMRC, and it may also be made available to Credit Reference Agencies.

Stanley Davis is offering clients a service address facility for £75 per annum. Please contact us for further details.

Administrative Restoration

Administrative Restoration is a new provision under the Companies Act 2006, which will be used to supplement the existing Court power to restore companies. The Court power will still exist for those cases where the Registrar cannot act.

Administrative Restoration can only be used where:

- the company was carrying on business / or in operation at the time of dissolution;
- the company has been struck off under section 1000 or 1001 (power of registrar to strike off defunct company);
- the application is made within a period of 6 years after the date of dissolution;
- the application is made by a former director or former secretary of the company;
- the Crown has signified consent (bona vacantia issue);
- the company has delivered all the necessary documents to bring the company up to date, i.e. all outstanding documents at the time of dissolution and any that have fallen due during the period of dissolution.

Single Alternative Inspection Location (SAIL)

The Companies Act 2006 introduces changes to the arrangements for inspecting a company's registers. Depending on the nature and situation of the company it may be obliged to keep up to 13 possible registers. These registers must either be held at the Registered Office Address (ROA), or at a Single Alternative Inspection Location (SAIL).

Companies must notify Companies House when they initially set up a SAIL address or if the SAIL address is moved. Once the SAIL address is set up the company can move some or all registers to the SAIL address by notifying Companies House.

Voluntary Dissolution

Voluntary dissolution will be extended to public limited companies. They will be eligible to apply under Section 1003 of the Companies Act 2006.

Slavenburg Charges

Companies House will no longer be accepting Slavenburg charges, created on or after 1 October 2009, as they relate to unregistered overseas companies. The Companies Act 2006 specifies that only overseas companies registered in the UK need to register a charge over UK property.

Northern Ireland Company Registry Integration

There will be a single company law regime applying to the whole of the United Kingdom. Companies will be UK companies rather than GB or Northern Ireland companies, and the same legislation will apply to all. As a consequence, Companies Registry Northern Ireland (CRNI) will integrate with Companies House

FAQ - Does my company need to update its articles?

We advise that all companies review their articles now for the following reasons:

- Provisions of the articles may have been overridden by the new Act, misleading directors or members as to their rights and obligations. For example provisions relating to written resolutions, proxies etc.
- The company may wish to take advantage of provisions of the Act, such as the allotment of shares without the need for shareholder approval or regard for pre-emption rights or the ability to change name other than by special resolution.
- The company may wish to remove obsolete references, e.g. references to AGMs, extraordinary meetings, company secretaries, which are no longer required.
- If companies want to restrict the subdivision/consolidation/redemption or repurchase of shares, they will have to provide for this expressly in their articles.
- A company can take advantage of the “safe harbour” allowed by the Act in relation to directors’ conflicts of interest by including appropriate provisions, including giving independent directors the ability to authorise conflict situations.

There is no legal requirement for a company to change its articles but in many cases it will be desirable.

Stanley Davis has specialised in company and property services for over 40 years. Details of our full range of services, can be viewed at www.stanleydavis.co.uk, or please email us at info@stanleydavis.co.uk.

We look forward to hearing from you.

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