

An Update from Stanley Davis Group

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The Companies Act 2006 – has it really made things simpler?

YES	NO
The Act was written on the assumption that companies will pass resolutions by written method rather than holding meetings, so a special resolution can now be passed if 75% of the voting rights sign up to it or express their approval.	Some decisions require proper formal discussion at a meeting. The onus is now on the shareholder to demand that a meeting be held.
Annual general meetings have been abolished for private companies.	For many companies the AGM is the main opportunity for shareholders to meet the board so the onus is now on shareholders to demand the meeting. Under the 1985 Act private companies could elect not to hold a meeting so this is nothing new. The period allowed to file accounts has been reduced by one month to 9 (private company) or 6 (public) months.
Directors' duties are now codified and so easier to follow.	Companies will need to make sure their Directors' Conflict of Interests article is well drafted. In a worst case scenario a director could be committing an offence by accepting corporate hospitality!
New model articles are much clearer and better drafted than Table A and there is one version for each of the three major types of company – private limited by shares, public and private limited by guarantee.	New model articles are good but there are a number of notable omissions. Most companies will need specific articles. Any company formed under the old Act needs to review its articles to remove inconsistencies and take full advantage of new provisions in the Act.
Companies are now easier to set up as you no longer need to make a statutory declaration before a solicitor or commissioner.	The paper form for incorporation is now 18 pages long and much more complex than the old forms.

Existing companies are offered better protection by new same name rules.	Choosing a new name is harder than ever. The list of controlled words and expressions has grown and the Registrar is enforcing them strictly. The new 'same as' rules are confusing for the public and Companies House staff alike.
Authorised capital has been abolished.	Many companies will need to update their memorandum/articles to prevent their 'authorised capital' acting as a cap. In addition companies with multiple share classes will need to specify the limits of directors to allot. Every time a company changes its capital it needs to file a statement of capital which can be problematic if the company has a complicated history of allotments at a premium.
Directors can now file a service address. The residential address is also filed but not disclosed on the public record.	Companies House will not be removing any residential addresses on the register.
Simplified restoration procedure for companies that have been struck off.	Only applies to companies struck off since 1 October 2009.
Financial assistance for acquisition of own shares rules has been removed for private companies.	Directors still need to make sure that any assistance does not amount to an unlawful distribution or reduction in capital.
Reduction in capital method simplified through solvency statement.	Directors may be criminally liable if they do not have reasonable grounds for their solvency statement.
A private company no longer needs a secretary.	The role of the company secretary has to be performed by somebody, most likely a director.

In summary, the Companies Act 2006, being the largest single piece of legislation ever, not to mention the numerous sets of regulations that it relies on, has made a major impact on the way companies are set up and run. It is likely to ease the administrative burden on private companies but for public companies there are not so many reforms. The codification of directors' duties and the new derivative claims procedure are interesting developments but it may require some case law before the new rules can be interpreted.

Multiple share classes

We are finding that an increasing number of clients are setting up companies with more than one class of shares. The default share in a company is generally called an 'ordinary' share and if you just have one class, all shares will receive equal rights on voting, dividends and return of capital on winding up.

You can add more flexibility by adding additional classes. Examples are: 'A' and 'B' shares where directors want the ability to declare dividends at variable rates; non-voting shares to be used as an incentive for employees; redeemable shares with or without a preferential fixed rate dividend as a means of raising capital. In fact the permutations are endless.

At Stanley Davis we have been creating new classes of shares for many years and can assist with a multitude of requirements. Due to the new method of incorporation, we have had to increase our prices for incorporating companies with different classes of shares. The extra charge for incorporating a company with two classes of shares is now £30 plus VAT, and for more than two classes of shares £50 plus VAT. Clients should also note that although multiple share class limited companies are formed electronically (normally within 48 hours of order), our e-formations website is not set up to incorporate them. Therefore if a company with more than one class of share is required, please confirm the details to us by sending an Email or a fax. Please note that Companies House still do not accept electronic applications for unlimited companies or for limited liability partnerships, where paper forms and live signatures are still required.

New form of articles for Right to Manage (RTM) companies

The right to manage (RTM) was introduced by the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and gave long leaseholders the right to join together to take over the management of the premises containing their flats. The 2002 Act required an RTM company to be formed in order to exercise this right and provided for regulations to be made about the content and form of its memorandum and articles of association.

The new Companies Act 2006 has introduced new regulations for RTM companies, the RTM Companies (Model Articles) (England) Regulations 2009 (the 2009 Regulations). These are available on the website of the Office of Public Sector Information: www.opsi.gov.uk. Any articles filed at Companies House must be compliant with the new Companies Act, broadly meaning there is no separate memorandum and any objects will need to be included in the articles. A transitional period has been provided for existing RTM companies from now until 30th September 2010. During this period existing RTM companies can continue to operate under their existing constitutions until such time as they elect to adopt the new articles of association prescribed by the 2009 Regulations.

Once the transitional period is complete, existing RTM companies will need to file amended articles accompanied by a special resolution, if they choose to become subject to the new articles of association during the transitional period. If they do not do anything during the transitional period, the new model articles prescribed by the 2009 Regulations will apply to them automatically at the end of the transitional period and the company will not need to file anything.

These new regulations apply to England only. The 2002 Act provides that the appropriate national authority will make regulations about the content and form of the articles of association of RTM companies, and Wales will be making its own regulations.

Please contact us if you wish to amend the articles of your RTM company.

New consultations

The Department for Business Innovation and Skills has announced three new consultations.

Objecting to a Registered Office Address

Views are sought on ways to minimise companies using the address of other businesses or private individuals as their registered office.

Notices of Auditors Leaving Office

Comments are invited on the options for simplifying the arrangements for the provision of information to shareholders, creditors, the audit and accounting authorities and Companies House when auditors leave office.

Statements of Capital

The statement of capital requirement, introduced in October, has proved problematical for companies with a complicated history of allotments of shares at a premium. The problem is acknowledged and government are now seeking views on how to simplify this.

Further details and comments may be made at:

<http://www.berr.gov.uk/consultations/open-consultations/index.html>

Administrative restorations

One of the more positive aspects of the Companies Act 2006 is the new procedure to restore a company. Although the Court procedure, which is complex, lengthy and expensive, continues to apply in certain cases, as long as other conditions are met a company is now able to apply to be restored directly to the Registrar at Companies House.

The new procedure, known as administrative restoration, applies where a company was dissolved because it appeared to be no longer carrying on business or in operation. A former director or member may apply to the Registrar to have the company restored, and if the Registrar restores the company, it is deemed to have continued in existence as if it had not been dissolved and struck off the Register. It should be noted that where a company has been wound up and dissolved, any application for restoration must still be to the Court.

To be eligible for administrative restoration, the company must have been:

- struck off the Register under Sections 1000 to 1002 of the Companies Act 2006; and
- dissolved for no more than six years at the date the Registrar receives the application for restoration.

Additionally an application for restoration may be made if the company meets the following conditions:

- it must have been carrying on business or in operation at the time it was struck off;
- if any property or rights belonging to the company became bona vacanti, the applicant must provide the Registrar with a statement in writing from the relevant Crown Representative giving consent to the company's restoration;
- it has delivered all documents necessary to bring the company up to date and paid any outstanding late filing penalties.

If you are interested in this procedure, we will send a Form RT01, an Application for Administrative Restoration, to the Registrar, together with a statement of compliance confirming that the applicant is legally entitled to make the application and that the conditions

for restoration are met. We will also make an application to the Treasury Solicitor for a Bona Vacantia waiver. The total cost is £400, including all the filing fees, compared to £1700 for the former Court restoration procedure.

Companies Act 2006 – do you need to update your articles?

In our last newsletter issued last month, we outlined the top 10 things you need to consider when thinking about changing a company's articles. We are receiving many requests from clients to amend their companies' articles – there may be outdated restrictions or misleading provisions contained therein and we recommend that companies should review and update their articles of association to take advantage of the new powers, even though there is no legal requirement to do so.

If you would like to update your articles to the most up to date version, drafted by leading company lawyers, please let us know.

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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