

An Update from Stanley Davis Group

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Are your articles up to date?

Did you know....

- Companies now only need to give 14 days' notice, rather than 21 days' notice, of a special resolution to be proposed at a general meeting?
- 90% of shareholders holding voting shares can now consent to short notice of a meeting?
- A company no longer needs to set out its objects in its memorandum and can have unrestricted objects?
- A company no longer needs an authorised share capital?
- The directors of a private limited company with one class of shares no longer need to be pre-authorized by the members to allot shares? Existing companies only need to pass an ordinary resolution to sanction such allotments.
- A private company can now issue redeemable shares, effect a reduction of capital and purchase its own shares, unless this is otherwise restricted by its articles?
- You can now pass a written special resolution with a 75% majority and a written ordinary resolution with a simple majority of those eligible to vote?
- A board of directors can now sanction a director's conflict of interest, provided that (if you are an existing private company incorporated on or after 1 October 2008) there is nothing prohibiting this in your company articles or (if you are an existing private company incorporated prior to 1 October 2008) a resolution of the members authorises this or (if you are a public company) your articles expressly permit this?

If you didn't know, your company's articles of association may not reflect these changes. At worst, your articles may conflict with the new provisions introduced by the Companies Act 2006 (the Act) which may affect the operation and validity of your articles. At best, you may be failing to take advantage of the greater simplification and flexibility offered by the Act.

If you would like help in updating your articles or adopting new ones, contact Shital Mehta on 020 7554 2261 or email formations@stanleydavis.co.uk.

Are the Model Articles the definite article?

The Model Articles for private companies limited by shares (Model Articles) introduced by the Companies Act 2006 last October now contain only 53 separate articles compared to the 118 regulations contained in Table A to the Companies Act 1985. So what has been left out or changed?

- The Model Articles no longer provide for a director to appoint an alternate to attend meetings and vote in his absence.
- Directors can now take unanimous decisions informally, for example by text message.
- The Model Articles prevent a director who is interested in a contract with the company from participating in the meeting at which the contract is discussed for quorum or voting purposes, except in very limited circumstances. They are more restrictive than the provisions of the new Companies Act 2006 (the Act) itself.
- The Model Articles only provide for a company to issue fully-paid shares, not nil paid or partly paid shares.
- The Model Articles contemplate that a company will only have one class of shares: they therefore don't include any authority for directors to allot shares. If you wish now or in the future for the company to have more than one class of shares, you will need to include express authority for the directors to allot shares.
- Provisions dealing with the calling and operation of general meetings are now set out in the Act rather than the Model Articles.
- The Model Articles no longer provide for companies to hold Annual General Meetings.
- The Model Articles envisage that the company will not have a company secretary.

The Model Articles on their own are unlikely to be suitable for every company. Unlike some formation agents who use these very basic articles, at Stanley Davis we use articles drafted for us by a leading firm of corporate lawyers and can customise these further to suit your company's particular requirements.

Companies House form problems

The new style Companies House paper forms have not met with universal approval. HM Revenue and Customs in particular are unhappy with form SH03 – return of a company purchasing its own shares. This form has to be submitted first to HMRC for duty to be paid on the consideration paid by the company to the shareholder. You may think it strange therefore that the form only requires the consideration to be included by public companies! HMRC definitely take that view and have asked Companies House to redesign the form to include private companies too. In the meantime we are advised to enter the total amount paid no matter what the type of company. In addition the signature must be dated even though there is no specific box for this.

Reduction of capital by solvency statement and reduction of capital by court order (Form SH19 – Section 644 and 649 of the Companies Act 2006)

Companies House are introducing a new filing fee from 6 April 2010 which will apply to any form SH19 Statement of Capital received at Companies House on or after that date.

The fee is £10 for the standard or £50 for the same day service.

The new reduction in capital method introduced by the Companies Act 2006, which allows a private company to use a solvency statement rather than an expensive court procedure, has proved very popular. It is unlikely that the small fee will deter any company interested in returning capital to shareholders.

Changes to the Memorandum of Association from 6th April 2010

Also from 6th April, when receiving submissions for new incorporations, Companies House will no longer accept a Memorandum of Association containing the address of the subscriber – only the name of the subscriber is to be included in the Memorandum. This was something that was planned to have been introduced from 1st October 2009, but there was such a degree of confusion at the time and so many complaints from clients that so much of their information was changed or was missing, that within a week Companies House relented, and provided the temporary measure of accepting subscribers' addresses on the Memorandum. This was put in place for six months, which on 6th April will come to an end.

We are aware that some clients will still be concerned that the subscriber's information submitted to Companies House is incomplete or incorrect. We will be offering an option to purchase for £3 a PDF of the IN01e image direct from the public record (Application to register a company), after the company has been incorporated.

Incorporations in Northern Ireland

The days of paper documents being filed in Belfast are over. Since last October the Northern Irish registry has been merged into that of the rest of the United Kingdom so we can now form companies there electronically and on a same day basis if required. The articles of association will be the exactly the same as they are for England, Wales and Scotland which means that the whole formation process is now a lot easier and cheaper.

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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