

An Update from Stanley Davis Group

Issue no. 21
November 2009

Company incorporations update

Following the implementation of the final part of the Companies Act 2006, which coincided with the wholesale upgrade of the IT systems at Companies House, we have now reached a stable situation where the vast majority of companies are being formed in a timely manner. The problems at Companies House resulted in the most stressful and difficult period in our 40 years of business, and it was only a minor comfort to know that we were not alone – the whole formations industry was affected very badly. The backlogs in our office have now been whittled down and normal service has been resumed. If you have any outstanding issues, for example with opening bank accounts for new companies, please let us know.

Company name problems

One major issue at the moment is the new stance on company names. There have been many important changes recently to the regulations and in the Registrar's discretionary powers.

Many clients have had problems with the new 'Same Name' rules set out in The Company and Business Names (Miscellaneous Provisions) Regulations 2009. All the old provisions remain, for example there are certain words which are considered to be identical when considering names – "&" for "and", "1" for "one" etc. Also, "the", blank spaces and punctuation are still ignored. The important changes however are as follows:

- 'S' at the end of a name. For example: if the company RZC LIMITED already exists, you will not be able to incorporate the company RZCS LIMITED.
- Certain words are being ignored BUT if companies are in the same group and a letter of consent is obtained they can be allowed. The English words falling into this category are as follows:

BIZ	EU	IMPORTS	ORG UK
CO	EXPORTS	INTERNATIONAL	ORG.UK
CO UK	GB	NET	SERVICES
CO.UK	GREAT BRITAIN	NI	UK
COM	GROUP	NORTHERN IRELAND	UNITED KINGDOM
COMPANY	HOLDINGS	ORG	

Following on from the example above, RZC IMPORTS LIMITED would not be allowed if RZC LIMITED was incorporated already, unless RZC LIMITED was in the same group and gave permission.

In addition, the Registrar is taking a more active line on sensitive words. For example, on the 18th October we formed a company with the word 'SOLICITORS' in the title with no problems. On the 19th we had a similar application rejected because we did not have consent from the Law Society. On enquiry we were directed to the Solicitors Act 1974 but we know for a fact that 25 years have passed by without the Registrar requiring any supporting information.

Also, the words 'CHARITY' or 'CHARITABLE' will no longer be allowed in company names without a letter of consent from the Charity Commissioners. We understand that the Commissioners will treat any such request as part of an application to register and it will take one to three months for consent to be forthcoming. If you wish to incorporate a charity quickly we recommend that you choose a company name without one of these terms in it and change the name at a later date.

Whilst the new rules are being learnt, we understand that some clients have been given misleading advice by Companies House. If you require any advice on company names please feel free to call us.

Redenomination of shares under the 2006 Act

This is a new procedure introduced by CA 2006 and is in force as of 1st October 2009.

S.542 allows shares in a limited company to be denominated in any currency. The new provision will make the conversion of share capital from one currency to another an easier process.

The minimum share capital of a public limited company must be denominated either in sterling or Euros (not a mixture of both).

S.623 specifies the method in which the nominal value of each share is to be calculated after redenomination, in essence, the aggregate nominal value of the shares of the class concerned expressed in currency A is converted into the equivalent in currency B and that converted aggregate is then subdivided by the number of shares in the class concerned to produce the new nominal value per share expressed in currency B.

The Act also includes a new provision for nominal value after redenomination to be rounded to whole units of the new currency without requiring Court approval or directors having to make a solvency statement.

Companies Act 2006 – do you need to update your articles? Top 10 Items to Consider

The final part of the Companies Act 2006 came into force on 1 October and brings with it major changes to a company's constitution.

Here we examine briefly what you should be looking at now:

1. **Objects.** A company now has all the powers of a natural person so, if you have objects or powers in your memorandum they will now be treated as restrictions.
2. **Capital.** If you have an authorised share capital, this is now a cap on the number of new shares the company may issue. The restriction can be lifted by deleting the clause or by adopting new articles.
3. **Authority to allot.** If a private company has only one class of shares, the directors no longer need shareholder authority (the old section 80 authority) to allot. An existing authority may act as a restriction.

4. **Change of capital.** Whereas companies used to need specific provisions in the articles for certain actions such as redemption of shares, now the reverse is true. If shareholders want to restrict the directors' powers, they must insert a restriction in the articles.

5. **Change of name.** A company can now change its name by other than a special resolution, e.g. by the directors, if the articles contain an appropriate provision.

6. **Directors' conflict of interest.** Directors now have a duty to avoid situations which conflict with the company's interests. The duty can be easily infringed. However the duty is not infringed if the matter has been authorised by the directors. The directors of a private company incorporated on or after 1 October 2008 have an automatic power of authorisation unless the articles contain conflicting provisions, but companies incorporated prior to this date need either to pass an ordinary resolution or amend their articles to take advantage of this power.

7. Since 6 April 2008, private companies no longer need to have a **company secretary**, but one is required if the articles demand it. If you wish to dispense with a secretary you must check and amend your articles if necessary.

8. The **notice period** required for a general meeting is now 14 clear days for any type of resolution (except for meetings called to deal with the removal of auditors or directors). If your articles specify a longer period an update is desirable.

9. Private companies do not now need to **hold an AGM** unless there is a specific provision in the articles. If there is such a provision you need to get it deleted to take full advantage of the Act.

10. **Written ordinary resolutions** can now be passed by a simple majority and written special resolutions by a 75% majority. As these provisions override anything in the company's articles, you should consider removing any conflicting provisions to avoid confusion.

In summary there is no legal requirement for an existing company to change its articles but we recommend that companies should review and update their articles of association to take advantage of new powers and remove any misleading provisions or outdated restrictions.

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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