

Company Formation

1st October saw the conclusion of the implementation of the Companies Act 2006 ("the 2006 Act"). The provisions of the 2006 Act have been implemented in phases since the Act received Royal assent in 2006. This briefing note sets out in summary form some of the changes which are in force from 1st October 2009.

Should you have any queries or require any further information please don't hesitate to contact either your usual contact at Crutes or, alternatively, Paul Bell or Anne McCulloch whose details are below.

The Company's Constitution

Companies incorporated before 1st October will be governed by their Memorandum of Association and Articles of Association (to be read in conjunction with the relevant 'Table A'; the default Articles that apply to a company unless amended by the company's own Articles). The Memorandum sets out the objects of the company (i.e. its purpose and powers), whereas the Articles provide the framework of rules by which the company should operate.

The 2006 Act effectively removes the Memorandum of Association, leaving the company's Articles as the primary governing document. Companies incorporated after 1st October 2009 do not require a Memorandum of Association and, therefore, unless otherwise specifically limited in the Articles of Association, such a company will have unlimited 'objects' (i.e. they will have no restrictions on the type of business they may undertake).

Companies in existence prior to 1st October 2009 will have their Memorandum treated as though it formed part of their Articles.

The 2006 Act provides a new set of 'Model Articles'. These Articles will apply to all companies incorporated after 1st October 2009 unless otherwise amended. New companies can choose to adopt the model articles in their entirety or as amended, or can use their own bespoke articles.

Amendments to a company's articles must be notified to Companies House within 15 days. Failure to comply with this deadline will be a criminal offence.

Share Capital

Under the 2006 Act there is no requirement for a statement of authorised share capital (previously included in the company's Memorandum of Association) and, therefore, no restriction on the number of shares the company can issue. Such provision in existing companies' Memoranda will, as with other provisions of the Memoranda, be amalgamated into the Articles; this can then be removed or altered.

Where a company has only one class of shares, and unless otherwise restricted by its Articles, its directors will have unlimited authority to issue shares.

Companies incorporated after 1st October 2009 no longer require authority in their Articles to enable them to purchase their own shares. Companies incorporated before this date, however, must check their articles and seek advice. In either event, share buybacks must be carried out strictly in accordance with the provisions of the 2006 Act for them to be valid and, therefore, it is important that suitable advice is obtained.

Service Addresses

Company Secretaries (if applicable) now only need to provide a service address to Companies House. Directors are, however, still required to provide their residential address but may, if desired, also provide a service address.

The service address will be the address for the director that is shown on the public record and may be the company's registered office if so desired. Where a director's residential address was listed prior to 1st October 2009, this will, become the service address for that director unless Companies House are otherwise notified.

There are restrictions as to when a director's residential address may be disclosed (for example to specified public authorities and credit reference agencies) and residential addresses which are not the service address for the relevant director will no longer be placed on the public register. There is not, however, a general mechanism for removal of historical records detailing the director's residential address

other than in certain limited circumstances.

In respect of those directors with unexpired existing confidentiality orders under the 1985 Act, these orders will be treated as continuing to exist under the 2006 Act.

Statutory Registers

There are new statutory registers for companies to use (for example the register of directors' residential addresses which must be maintained due to the changes relating to service addresses).

Companies are not required to retain their full statutory books at the registered office and make them available to the public there. A company can now hold registers and make them available for inspection at the registered office or at one other nominated address (a 'single alternative inspection location' or 'SAIL' address). This address must be notified to Companies House when set up or if moved.

Companies may no longer periodically close their register of members.

Statement of Capital

Companies limited by shares must complete a statement of capital as part of any annual return filing made on or after 1st October 2009. Similarly, a statement of capital will be required as part of notification of capital changes, for example an allotment of shares. The statement of capital will provide a summary of the company's capital structure.

Companies House Changes

Companies House have, as a result of the 2006 Act's final implementation stage, created an entirely new set of forms to replace the existing forms.

The naming of forms under the 1985 Act was based around the section of the 1985 Act to which the form related.

The new forms are named depending on their subject matter. For example, whereas form 288a previously dealt with appointment of director or secretary, this is now subdivided depending on the specific event. Form AP01 deals with appointment of a director, AP02 for a corporate director, AP03 for a secretary and AP04 for a corporate secretary.

The new naming regime is intended to be easier to use as the prefix is designed to give an indication of the subject matter of the form ('AP' for appointment, 'TM' for termination, 'SH' for share capital, 'NM' for change of company name etc.). Likewise, the subdivision of certain forms is intended to ensure that there is less confusion as to what information is required in each case.

The new forms will be available to download from Companies House and the key forms are available using the Companies House 'webfiling' software for filing online.

Whether you need to use the new or old form will depend on the date of the event giving rise to the need for the form. If, for example, a director resigned before 1st October 2009, form 288a will be required; resignation from this date requires form TM01.

If you have any queries, please do not hesitate to contact Paul Bell or Anne McCulloch.



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