

Companies Act 2006 - Making Life Simpler



2010 Update

The Companies Act 2006 has heralded a significant change to the duties and processes applicable to both Public and Limited Companies. The timetable for implementation of the new Act was largely driven by European Directives focussed on making Company Law more homogenous, and have had the end result of simplifying UK Company Law for small Limited Companies. The First Directives came into force in January 2007, including the new e-communication provisions, and the final provisions were enforced in October 2009.

The new Act has made many intricate changes to existing systems and structures within a Limited Company, including significant de-regulation for private companies, including among others:

- normalisation of the Elective Regime
- removal of need for a Company Secretary
- introduction of lower thresholds for written resolutions
- reduction of notice period for meetings from 21 to 14 days
- codification of Directors' duties
- formalisation of electronic communication
- dereliction of company objects unless articles specifically restrict them
- removal of requirement for an Authorised Share Capital for a new company.

Many of the newly simplified arrangements such as the removal of any reference to Authorised Share Capital need to be undertaken by an amendment to a Company's Articles, whilst other elements of the new Act can be introduced immediately.

Directors

If you are a Director, Company Secretary or Shareholder of a Private Limited Company then the new Act could radically simplify the processes you need to undertake for daily decisions to be approved and ratified. Directors should, however, also be cautious of the definitions of a Director's general duties which are now set out within the Act itself, although still with reference to old law and case law. The new Act imposes greater obligations on Directors with regard to the newly defined duties.

The other primary change effected by the new Act relates to the regulation of Directors themselves. Amongst the key changes are the introduction of a newly expanded Derivative Action for negligence, as well as the existing fraud, and the new rule destroying commercial directorship by ensuring that all companies must have at least one natural person as a director.

A multitude of other new rules give on the one hand but take on the other, for example providing Directors with greater privacy, particularly in relation to their home addresses, but they extend the net of connected persons to their siblings.

Articles of Association

The Companies Act 2006 has removed the need for Table A and replaced it with "Model Articles". There are 53 Model Articles covering different areas of the Companies Act 2006. These Model Articles are to be incorporated for all new Companies registered after 1st October 2009. As with Table A, a company may choose which of the Model Articles to incorporate into their Articles of Association.

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A company currently using Table A in their Articles should consider updating to the Model Articles. The reason for this is that the Model Articles are designed for companies to have a constitution which reflects the provisions of the Companies Act 2006. Table A is now outdated and reflects the provisions of the Companies Act 1985. One of the aims of the Companies Act 2006 is to make running a business easier. By adopting the Model Articles a company can benefit from these new provisions.

Some of the main changes from Table A to the Model Articles are:

1. The Memorandum of Association has now been reduced in scope and the Model Articles contain some of the narrative that was historically contained in the Memorandum.
2. The new Model Articles are worded in a simpler fashion than the previous Table A regulations.
3. There is now no provision relating to partly paid shares (calls on shares).
4. The regulations regarding Directors meetings have been simplified so that all the Directors do not now need to be in the same location if they meet by conference telephone call or video conference.

In short, the Act sweeps a new broom through Company Law, giving much in the way of sensible consolidation, but also clarifying and extending both the responsibilities placed on Directors and the potential actions that can be taken against them. All in all, there are a huge range of provisions to incorporate into the Articles of even the smallest Limited Company, introducing changes that need careful advice and attention.

If you would like to receive specific, tailored advice from our team of expert Lawyers then please contact us at our Cockfosters Office on 020 8441 1556 or at our Barnet Office on 020 8364 9955 or by e-mail to law@pwjsolicitors.co.uk.

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