

GARSIDE & CO LLP

GUIDANCE ON CA2006

THE FINAL PUSH

OVERVIEW

The remaining sections of the Companies Act 2006 are due to come into effect on 1 October 2009. It is, therefore, important to be ready for the changes and the impact they could have on your company.

The principal changes, among others, that will come on stream on 1 October will affect the role played by a company's memorandum and articles of association, the way that share capital is managed and details about directors and secretaries that must be made public.

We outline some of the major new rules and their significance for your company. Make sure you are well prepared for the last implementation date of the Companies Act 2006:

(1) FORMING A COMPANY

As from 1 October 2009, it will be possible for just one person to set up a company with just one shareholder. But a public company will still need to have a minimum of two directors.

Memorandum of Association

Under the Act, a company's memorandum will in future be a pared down document. For any company incorporated after 1 October 2009, all the memorandum will need to include is a limited amount of information, stating that the subscribers want to form a company, providing the company name and setting out the initial share capital. The memorandum will still be an essential document when it comes to registering a new company but it will be fixed; it won't evolve as the company itself develops.

What about existing companies? The information contained in the memorandum - the location of the registered office, the company's objects, the statement of its limited liability, the share capital, the confirmation that it is a public company should that be case, etc - will be part of the company's articles of association. When a company wants to amend or change its objects - the statements that set out a company's activities - it can do so by altering the articles.

New model articles of association

The Act, in an endeavour to simplify company constitutions, introduces new model or template articles. There are separate model forms for private and public companies limited by shares (the old Table A regime covered all companies limited by shares). The intention is to address then needs of smaller, owner-run businesses. Should a company want to include issues that are not covered by the model form, it can, of course, add them or create its own articles. Given that many public companies will want quite specific articles, the model form in their case is more of a draft document than a template.

What about existing companies? They are able to retain their existing articles. They can, however, opt to update them, excluding any outmoded provisions and including new measures, such as the opportunity to have unlimited objects, a freedom that also comes into force on 1 October 2009, providing the appropriate resolution is passed.

(2) SHARES AND SHARE CAPITAL

Authorised share capital

Authorised share capital sets an upper limit on the number of shares that the directors of a company can issue.

But since actual share issues often build in extra room for manoeuvre, the limit is often irrelevant. So, on 1 October, companies will no longer be required to have an authorised share capital. Directors will be able to create shares by board resolution. If a company wishes to have a limit on the number of shares that can be issued, then it should amend its articles accordingly.

What about existing companies? Changes to the memorandum mean that the authorised share capital provision switches to the articles of association. The rules allow a company to alter or drop the authorised share capital provision by ordinary resolution.

Allotment of shares

If a private company has only one class of shares, then directors will be able to allot shares without the prior authority of the shareholders.

However, the rules also mean that the power of directors to allot shares will be subject to the company's articles; so shareholders can employ the articles to prevent or limit that power. In the case of private companies with more than one class of shares and public companies, the directors will still need the backing of shareholders to allot shares.

What about existing companies? Directors of private companies with only one class of shares won't be able to allot shares except where shareholders give their consent by ordinary resolution.

Purchase of a company's own shares

Under the 2006 Act, public and private companies will have the authority to purchase their own shares unless they are stopped specifically from doing so by their articles.

(3) CHANGING COMPANY NAMES

As from 1 October, companies will be allowed to add a method of changing their names to their articles without a special resolution.

This will make name changes quicker and easier.

(4) DIRECTORS AND COMPANY SECRETARIES

At the moment, directors and company secretaries must add their residential addresses to the company register and must also give their home addresses to Companies House. In both instances, the addresses are in the public domain.

As from 1 October, all directors will still be required to provide their companies with a residential address, but this will not appear in the company register, only in a separate, protected register. The only address directors will need to make public is their service address, probably the company's registered office. Company secretaries will only need to supply their companies with a service address.

Companies House will still want to know the residential addresses of any directors, but will make sure this information is not publicly available.

What about the directors of existing companies? The home addresses of directors of existing companies won't be removed from the company register but will be regarded as the service address. Only when a director or company secretary moves house will the rules apply, and the new home address will not appear in a public record.

If you would like any help or advice on the new rules, please don't hesitate to contact us:

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