

The Companies Act 2006 - A few changes from 1st October 2009

The final implementation date for the Companies Act 2006 is set for 1 October 2009. A major change under the 2006 Act is that a single person acting as the subscriber to the company and becoming the first shareholder can set up a private or public limited company (although it must still have at least two directors in a plc). Such person must be a natural person as opposed to a corporate entity. The documents required for incorporation after 1st October 2009 are as under. a) A new form memorandum b) A copy of the articles (unless adopting a standard articles provided under the act c) An application to register d) A section 10 statement of capital and initial shareholding d) A statement of the proposed officers of the company e) A statement of the registered office f) A section 13 statement of compliance which replaces the previous Form 12 and is not required to signed before a Solicitor or Notary Public.

From 1st October 2009 the memorandum will state that the subscribers wish to form a company and have agreed to become the first members. This document will remain unalterable. The main constitutional document in all cases will be the articles. Companies will be able to choose model articles, with or without modifications. Unless a company's articles specifically restrict the objects of the company, its objects will be unrestricted. The doctrine of ultra vires may finally become history. Existing objects will remain in force to limit the activities of a company unless and until removed by appropriate members' resolutions but will be deemed to form part of the articles.

The Companies Act 2006 will allow "provision for entrenchment" within the company's articles. However an existing company will have to continue to abide by its existing memorandum (including any restricted objects) and articles, including Table A etc., unless and until duly amended. The amendment is not mandatory but the companies may amend if they wish to do so. It will now be possible for companies incorporated under the Companies Act 2006 to "entrench" only certain provisions in their articles, i.e. to provide that certain provisions can be amended only with the approval of a majority exceeding 75%. Provision for entrenchment may only be made in the articles on formation or by an amendment of the articles agreed to by all the members. Notice of entrenched provisions are required to be filed at the Companies House.

From 1 October 2009, registers of directors and particulars provided by directors will no longer need to state the names of other companies of which the director is or has been a director. Directors will have to disclose former names if used "for business purposes" within the previous 20 years; this could include, for example, changes of name on marriage.

From 1 October 2009, directors' and company secretaries private residential addresses will no longer appear on the public register. However, the addresses must still be provided to the Registrar of Companies which will not be in public domain. Service addresses may be given by such directors' and company secretaries for the public register (which may be the company's registered office). The same will apply to company secretaries. Note, however, that addresses already provided to the Registrar of Companies will not be removed from the public record; there is already a procedure whereby persons at risk of violence may be able to have their addresses removed.

Changing a name can now be done by any means set out in the articles, although there are some new procedures including that notice must be given to the registrar with a statement that the change in name has been made in accordance with the articles.

The provisions of the existing Business Names Act 1985 are incorporated into the Act and widened so that they will apply to any business other than individuals trading under their own surnames (plus forenames or initials) and partnerships (with no corporate partners) trading under names made up of the partners' names. The rules will apply to companies' registered names and any name used by an overseas company for business in Britain.

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