

FOR ACHIEVING YOUR GOALS



THE COMPANIES ACT 2006 A NEW FORM OF CONSTITUTION

The remaining provisions of the Companies Act 2006 come into force on 1st October 2009.

These changes are significant in relation to the constitution of a company and its administration. This briefing note highlights some of the key changes.

The Memorandum

The memorandum of a company has traditionally been an important part of a company's constitution. Its purpose was to set out certain fundamental parts of a company's constitution such as the company name, authorised share capital and its objects. A company's objects formed the fundamental basis upon which a company could operate, setting out the nature of the business to be carried on by a company and other key powers. For any company incorporated on or after 1st October 2009, the memorandum will no longer form a part of a company's constitution. It will essentially be a "snapshot" setting out details of the subscribers at the point of registration and will have no ongoing relevance to a company's constitution.

For any company incorporated prior to 1st October 2009, any provisions of their memorandum over and above what is required in the new form memorandum will be treated as part of the articles of association of that company. This will include provisions such as the name of the company and the objects of the company as set out in the existing memorandum. A company's objects will be unrestricted with effect from 1st October 2009 unless the articles of association specifically restrict those objects. Existing companies will not be legally required to change their objects as the objects clauses contained in their existing memorandum will be deemed to be incorporated into their articles.

Commercial Property

Corporate & Commercial Law

Debt Recovery

Franchising

Employment & HR

Dispute Resolution

Licensing

Residential Conveyancing

Wills, Trusts & Probate

Family & Matrimonial

Personal Injury

Employment

Dispute Resolution



Articles of Association

New model articles will be in force with effect from 1st October 2009. Any new company formed on or after 1st October 2009 will either need to adopt these new model articles or adopt bespoke articles which exclude or modify the new model articles.

Companies incorporated before 1st October 2009 are not legally required to adopt new articles of association. However, serious consideration should be given to this for the following reasons:-

- there may be provisions in the existing articles of association which are now obsolete following the implementation of the Companies Act 2006.
- the provisions of the company's memorandum will be deemed to be incorporated into the company's articles of association.

This could be potentially confusing for companies and for the sake of clarity and administrative simplicity, it would be easier for these provisions to either be specifically reflected or amended in new articles.

This could also prevent a company from accidentally falling foul of the new filing requirements in relation to articles which will apply to any amendments to a company's articles on or after 1st October 2009. These provide that the relevant part of a company's memorandum deemed to be incorporated into the articles will also need to be filed. This could prove to be an administrative burden in practice. There is also a new civil penalty of £200 for failure by a company to deliver its amended articles following notice from the Registrar of Companies. This is in addition to criminal sanctions which could apply if a company fails to file a copy of its amended articles within 15 days.

Adopting new articles will allow a company to take the benefit of some of the more lenient provisions coming into force on 1st October 2009 such as removing the concept of authorised share capital and electing to have unrestricted objects.

Directors Addresses

With effect from 1st October 2009, directors must supply Companies House with their residential address and a service address. The residential address will not be held on the public record. Companies will therefore need to have two separate registers. The residential address must be kept confidential.

Company Names

From 1st October 2009 certain private companies will be able to apply for an exemption from using the word "Limited" as part of their company name. This exemption will apply to charities or certain companies limited by guarantee. From 1st October 2009 a company will be able to change its name by means other than a special resolution. The Companies Act 2006 will permit a company to change its name by other means specified in its articles such as by resolution of the board.

More Information

If you would like any further information on the matter referred to above or would like to discuss how these changes could impact on your business or your client's business, then please contact:-

Gavin White
gwhite@fraserbrown.com tel: 01159 888 710

Robin Wright
rwright@fraserbrown.com tel: 01159 888 714

www.fraserbrown.com