Bowling&Co.
SOLICITORS

The Companies Act 2006: key provisions of the final stage of implementation

"One of the principal objectives of the 2006 Act has been to simplify procedures for, and to facilitate the operation of private companies…"

Parmjit Bhogal
Associate solicitor
020 8221 8038
parmjit.bhogal@bowlinglaw.co.uk

The final provisions of the Companies Act 2006 (the 2006 Act) will be implemented on 1 October 2009. One of the principal objectives of the 2006 Act has been to simplify procedures for, and to facilitate the operation of, private companies and this objective is the common thread in the key changes discussed below.

Company Formation

The memorandum of association:

The 2006 Act will make some significant changes to the content of this constitutional document this October. The memorandum of a company formed under the 2006 Act will look very different to that of a company formed under the Companies Act 1985 (the 1985 Act). The following points are of note:

- From 1 October 2009 the memorandum will essentially be a snapshot of the company's constitution at the point of registration, stating that the subscribers wish to form a company and have agreed to become members and to take at least one share each.
- The memorandum will have no continuing relevance and will not be capable of being amended or updated.
- The memorandum will be in a prescribed form.
- For companies formed under the 2006 Act, constitutional information such as the company's name, the company's objects, its liability, status and the place of the registered office which were contained in the memorandum under the 1985 Act will not, from 1 October 2009, be part of the memorandum but will either be dealt with in the articles or, in the case of the name, just recorded on the certificate of incorporation.

Existing companies will not be required to amend their articles to reflect this change. Under the 2006 Act provisions that were in the memorandum under the 1985 Act will be treated as forming part of the articles of the company from 1 October 2009. For example under the 2006 Act, unless the articles specifically restrict the objects of the company, its objects are unrestricted, but existing companies will continue to be subject to their objects clause.

The Articles of Association - model articles

The company's internal rules are set out in its articles of association. The articles will now be the sole document governing the company's constitution (save for any private agreements not required to be filed at Companies House i.e. shareholders' agreements). The following points should be noted:

continued

Bowling & Co Solicitors, 62 Broadway, London E15 1NG. Regulated by the Solicitors Regulation Authority.
This Article is written as a general guide and is not a substitute for professional advice.
You are strongly recommended to obtain specific professional advice before you take any action.

Bowling&Co.
SOLICITORS

The Companies Act 2006: key provisions of the final stage of implementation (continued)

"One of the principal objectives of the 2006 Act has been to simplify procedures for, and to facilitate the operation of private companies…"

Parmjit Bhogal
Associate solicitor
020 8221 8038
parmjit.bhogal@bowlinglaw.co.uk

- The principal change is that the existing model articles (Table A) will be replaced and there will be new model articles for private companies limited by shares, private companies limited by guarantee and public companies.
- The new model articles will apply by default to companies incorporated on or after 1 October 2009, although, as is the case currently, companies will be able to modify or exclude the model articles.
- The private company model articles are distinctly short form and have been drafted with the requirements of small owner-managed businesses in mind.

Existing companies will not be required to change their articles. The model articles that were in force at the time that a particular company was registered, or which it had later adopted, will continue to apply to that company. To the extent that the existing articles are inconsistent with the 2006 Act, they will be overridden by the 2006 Act.

Entrenched rights

A company formed under the 2006 Act must indicate whether its articles provide provisions for entrenchment. This means that the articles of association may contain some provisions that may only be amended or repealed if certain restrictive conditions or specified procedures are met that are more restrictive than those applicable in the case of a special resolution. This does not prevent any amendment of the articles by agreement of all the members of the company. The following points are of note:

- Companies will only be able to adopt entrenchment provisions in their articles on formation or if all the shareholders agree to an amendment to the articles.
- The registrar of companies must be notified of such entrenched provisions.
- Where a company's articles contain such a provision, any amendment or removal of such provisions must be notified to Companies House accompanied by a "statement of compliance" certifying that the amendment has been made in accordance with the company's articles.

Change of company name

The 2006 Act contains a new provision allowing a company to change its name by means of a procedure set in its articles of association.

continued

This Article is written as a general guide and is not a substitute for professional advice.
You are strongly recommended to obtain specific professional advice before you take any action.

The Companies Act 2006: key provisions of the final stage of implementation (continued)

"One of the principal objectives of the 2006 Act has been to simplify procedures for, and to facilitate the operation of private companies…"

Parmjit Bhogal
Associate solicitor
020 8221 8038
parmjit.bhogal@bowlinglaw.co.uk

Under the 1985 Act a company could only change its name by special resolution. From 1 October 2009 a company will be able to specify in its articles other procedures to the special resolution for changing the company name, for example simply vesting the power in the directors by a single board resolution.

Authorised share capital

A company's authorised share capital is the total amount of issued and un-issued share capital. If it intends to issue new shares it must have sufficient authorised share capital to do so, any increase in the authorised share capital must be approved by an ordinary resolution of the shareholders. Companies incorporated on or after 1 October 2009, both public and private, will no longer be required to have an authorised share capital.

For existing companies, from 1 October 2009, the statement of authorised share capital currently contained in the memorandum of association will be treated as forming part of their articles. If an existing company wishes to take advantage of the provision in the 2006 Act it will need to pass an ordinary resolution to remove the authorised share capital provision from its articles.

Authority to allot shares

Under the 1985 Act the directors need to be authorised to issue shares in a company or issue any right to subscribe for or to convert any securities into shares in the company.

After 1 October 2009 the substantive change is that private companies with only one class of share capital will not need authority to allot unless their articles of association require it. This will be a useful provision for private companies which will not have to obtain shareholder authorisation for the allotment of new shares by the directors. The 2006 Act does not change the position for public companies, as such the directors will continue the need to be authorised to allot shares.

Existing companies will have to pass an ordinary resolution if they wish to take advantage of this provision.

Pre-emption rights

Pre-emption is a right of first refusal for existing shareholders over an issue of new shares, allowing them to preserve their percentage shareholding in the company. This basic principle is unchanged by the 2006 Act and pre-emption rights will continue to apply as they do at present allowing shareholders to protect their percentage shareholding in the company.

Reduction of share capital

Generally speaking the 2006 Act relaxes the law concerning maintenance of share capital.

From 1 October 2009 it will no longer be necessary for companies to be authorised by their articles before they can effect a reduction of capital. The following points are of note:

Continued

Bowling&Co.
SOLICITORS

The Companies Act 2006: key provisions of the final stage of implementation (continued)

"One of the principal objectives of the 2006 Act has been to simplify procedures for, and to facilitate the operation of private companies…"

Parmjit Bhogal
Associate solicitor
020 8221 8038
parmjit.bhogal@bowlinglaw.co.uk

- Under the 2006 Act a company limited by shares is free to reduce its capital by a special resolution of its members (supported either by court approval or, for private companies only, a solvency statement). However the articles may contain a prohibition against any such reduction.

- Whenever a reduction of share capital is effected, the documents filed at Companies House must be accompanied by a "statement of capital" setting out the details of the share capital as reduced. From 1 October 2009, companies will be required to file a statement of capital where an alteration of share capital affects:

  - Any of the total number of shares allotted.
  - The aggregate nominal value of those shares.
  - The value of the individual shares that have been allotted.
  - The amount (if any) unpaid on those shares.

Companies House have confirmed that there will not be a prescribed from for a statement of capital and it is likely to become a familiar feature for companies

Purchase by a company of its own shares

From 1 October 2009 private and public companies alike will be able to purchase their own shares subject to any contrary provision in their articles. The main substantive changes are that a specific authorisation in a company's articles for it to purchase its own shares will no longer be required and when the Registrar of Companies is notified of a purchase the return must be accompanied by a statement of capital (noted above under the heading Reduction of share capital). The power to purchase own shares applies to all companies from 1 October 2009 whether incorporate before that date unless specifically prohibited by its articles.

Conclusion

The changes coming into force on 1 October 2009 are mostly technical and will take some getting used to for both directors and practitioners alike. As the changes impact to a large extent on a company's constitutional documents it is advisable that companies review their memorandum and articles of association after October 2009 and amend them to take advantage of any changes covered in this briefing.

For more information contact Parmjit Bhogal on 020 8221 8038 or email him at : parmjit.bhogal@bowlinglaw.co.uk

Bowling & Co Solicitors, 62 Broadway, London E15 1NG. Regulated by the Solicitors Regulation Authority.
This Article is written as a general guide and is not a substitute for professional advice.
You are strongly recommended to obtain specific professional advice before you take any action.